United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume VIII—Pages A-4761 to A-5440

UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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lacking available utility systems, isn't that so?

A Yes.

Q Can you tell us how much of the 7,000 acres of vacant land residentially zoned within the Albuquerque city limits has only secondary usability within the meaning of the 1972 vacant land study?

A We have not calculated that as of this point in time.

Q Can you give me an estimate of how much of that land has only secondary usability?

A I cannot.

Q So that you are not even in a position to estimate how much of those 7,000 acres is likely to be developed in the foreseeable future, is that what you are telling us?

A What I am telling you is that we have not finished our vacant land study for this year.

Q And so you don't know what percentage of that 7,000 acres has only secondary usability?

A That's right.

Q Thank you very much, Mr. Carruthers.

MR. LAVINSKY: That's all I have.

MR. KAUFMAN: Your Honor, as we discussed yesterday, we would like a recess at this point.

MS. THOMPSON: Your Honor, before that, this morning Mr. Carruthers marked on Government Exhibit 1075-A in blue the areas that he testified to yesterday under cross examination by Mr. Arkin.

We would like to put on the record what it is that he marked out.

THE COURT: Those are the portions that Mr. Arkin asked him were non-developable?

MS. THOMPSON: Yes.

If I can just briefly, with Mr. Carruthers' help, if it is all right, simply recite where the blue lines are.

THE COURT: All right.

MS. THOMPSON: Beginning in the northwest quadrant, Mr. Carruthers, is it correct that you outlined in blue with a dotted line the area which you testified yesterday was subject to problems with regard to volcanoes and lava flows?

THE WITNESS: Yes. That's this area in here (indicating).

MS. THOMPSON: So that the record is clear, it is correct, isn't it, that we agreed that you would not put a blue dotted line down the escarpment which shows clearly on the topographical photograph so that topographical line would still remain visible?

THE WITNESS: Yes.

THE COURT: Does that mean that is the edge of the lava flow area, then, the escarpment?

THE COURT: Yes.

MS. THOMPSON: Proceeding further south, I direct your attention to an area which has at its northern and southern boundary straight blue lines and then jagged blue lines to the east with the A in the middle, is that the Atrisco grant area?

THE WITNESS: The portion of it that is within the study area of the 1985 plan.

MS. THOMPSON: And proceeding further south, there is an area with a blue line, straight blue line on its northern boundary and a solid green line marking the end of the study area on its boundary and with a P.

Is that the Pajarito grant?

THE WITNESS: It is a portion of the Pajarito grant.

MS. THOMPSON: The portion that appears in the study?

THE WITNESS: Yes.

MS. THOMPSON: Coming to the southeast quadrant, there is a second with a dotted blue line with the letters

"TA" in it.

Is that the Tijeras arroyo?

THE WITNESS: Yes, it is.

MS. THOMPSON: And then proceeding further east there is an area with a dotted blue line which comes up and then straight down south to the end of the photograph with a M.

Are those the military lands?

THE WITNESS: Yes.

MS. THOMPSON: Is that the Kirtland Air Force Base and the Sandia Air Force Base you testified to?

THE WITNESS: Yes.

MS. THOMPSON: Proceeding further north to the eastern-southern area, there is an area that has a solid blue stripe.

Are those the lands you testified yesterday that the city either already owned as public land or is in the process of acquiring?

THE WITNESS: Yes.

MS. THOMPSON: Proceeding further north, again at the eastern egde of the study area, there is a dotted line which comes straight down and then makes a slight curve.

Is that the area which you testified was in the Sandia Foothills?

THE WITNESS: Yes.

MS. THOMPSON: Now, proceeding further west, there is a dotted line which comes across approximately twelve inches and then up.

Is that the area which you testified was North Albuquerque Acres?

THE WITNESS: It's a portion of North Albuquerque Acres, yes.

MS. THOMPSON: And then you testified yesterday that the riverbed was also non-developable, and did we agree this morning you would not outline the riverbed but that we could all see clearly where the riverbed is?

THE WITNESS: Yes, the portion between the river side drains on either side of the river and shown on the photograph (indicating).

THE COURT: All right. We will have a short recess.

(Recess)

nd t2b

3A

(In open court - jury present)

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

REDIRECT EXAMINATION

XXX

BY MR. KAUFMAN:

Q Mr. Carruthers, do you recall Mr. Arkin showing you a defense Exhibit EJ, which is the Wilbur Smith transportation study done in 1965?

A Yes.

Q Do you recall that he directed your attention to page 83 of this report and ask you if the report projected a 400 percent increase in the growth of the northwest section by 1985?

A Yes.

Q What is meant by percentage increase in growth?

A Well, that is based on the population that existed in that area, that is the percentage of increase over that population.

Q In other words, you take the base figure as of a certain year and then you take the porjected figure in a projected year?

A That is right.

Q And the growth from the base figure is the percentage of growth, is that correct?

A Yes.

Q How does percentage growth differ from absolute growth?

A Well, absolute growth is the total number of -- the total amount of growth, the total number of units.

Q Number of people?

A Number of people, yes.

Q With respect to the northwest section, as reflected in Exhibit EF, what was the base figure used for the northwest growth?

A 42,661.

Q What was the anticipated 1985 figure?

A 172,800.

Q That would be a difference of approximately 130,000 people by 1985 in the northwest section, is that right?

A Yes.

Q That is absolute growth, is that correct, 130,000?

A Yes.

Q Now, with respect to the northwest section, what was the base figure in that report?

A 69,940.

Q What was the anticipated 1985 figure for the northeast section?

A 240,700.

Q That would be an absolute growth in the northeast section of approximately 170,000; is that correct?

A Yes.

Q Greater absolute growth in the northeast than in the northwest by 1985, is that correct?

A Yes.

Q By the way, did you talk with representatives of the defendants before you testified here?

A Yes, I did.

Q In Albuquerque?

A Yes.

Q Did you provide them with a copy of this report?

A Yes, they xeroxed the copy that was in my office.

Q By the way, those same growth projections by quadrant appear in the 1985 land use plan?

A Yes.

Q In other words, the 1962 population for the southwest is given as 42,661 and the anticipated 1985 population is 172,800?

A For the northwest.

Q For the northwest, right.

A Yes.

Q And for the northeast, the same given figure of 69,940 is used for 1962?

A Yes.

Q The projected population of 240,700 for the northeast by 1985?

A Yes.

Q Do you recall Mr. Arkin going over with you what the population of Albuquerque was in different years and what Albuquerque's acreage was during those years and arriving at a density figure of approximately five people per acre?

A Yes.

Q Now, that is an average figure based on gross acreage, is that correct?

A Yes.

Q In other words, an average of five people per acre including developed and undeveloped land?

A Yes.

Q Now, the projected population for 1985 was 825,000; is that correct?

A That's right.

Q I believe you testified that was the high range that was used; is that right?

A Yes, it was.

Q Was that considered to be the most likely possibility?

A No. There was a middle range that was considered to be the most probable.

Q The middle range was considered the most probable?

A That's correct.

Q But the high range was chosen for what reason?

A To cover all the eventualities, especially for transportation planning purposes.

Q Is that spelled out in the report?

A Yes.

Q Sticking, though, with the high range, the 825,000, the study area of the 1985 report was 212,000, is that correct?

A Yes.

Q Will you accept my arithmetic that with 212,000 acres and a projected population of 825,000 that would work out to an average gross density of less than four people per acre?

A Yes, it would.

Q That would be an average gross density less than --

MR. ARKIN: We will not accept Mr. Kaufman's mathematics.

THE COURT: Take your pencil right now, Mr. Arkin, and divide it.

MR. ARKIN: We are doing that.

(Pause)

THE COURT: 3.9999.

MR. ARKIN: He was an engineer before he became a lawyer.

MR. KAUFMAN: I think it is around 3.8, your Honor.

MR. ARKIN: That is correct, 3.8.

Q That would be an average gross density less than has existed in Albuquerque, is that correct?

A Yes.

Q The average gross density being 5, correct?

A Yes.

Q Do you recall Mr. Arkin and this morning Ms. Thompson going over with you certain portions of the study area which you have outlined in blue?

A Yes.

Q Of the study area in total, in other words of the 212,000 acres, approximately what percent of the study area is taken up by the areas in blue?

A I would estimate somewhere in the neighborhood of twenty percent.

Q Twenty percent of 212,000 acres would be approximately 42,000 acres; is that correct?

A Yes.

Q Taking 42,000 acres from your 212,000 acres would give you approximately 170,000 acres, is that correct?

A Yes.

Q That is assuming that all the areas outlined in blue would be totally unavailable for development; is that correct?

A Yes.

Q Assuming that for now.

Given the projected population of 825,000 people and a study area of 170,000 acres, am I correct in saying that the average gross density would then work out to be about 4.8?

A Yes.

Q That would be approximately the same as the existing average gross density in Albuquerque; is that correct?

A Yes.

Q Assuming that all the areas in blue were unavailable for development?

A Right.

Q Mr. Carruthers, do you agree that the areas outlined in blue are unavailable for development?

A Not entirely, no.

Q Which areas of those that you have outlined in blue -- and maybe you ought to designate it on the map again -- do you agree are totally and absolutely unavailable for development?

A The areas here in the Sandia Mountains and the foothills area up here along the eastern edge of the city are not available.

The lava flow area here is not suitable for development even though some of it is platted.

The Tijeras Arroyo and the military lands are not available for development.

Q You can resume the witness stand, Mr. Carruthers.

Directing your attention to the Atrisco land grant, is that totally unavailable for development?

A No.

Q Why would you say that?

A Well, there is development already in place on parts of the Atrisco grant.

Q Is that the industrial park?

A The Westland Industrial Park has begun on Atrisco grant land and the Snow Vista development is on Atrisco grant land.

Q Why do you say that the remaining portion is not available for development?

A The title companies that have worked on the Atrisco grant development have informed us that they can resolve the title problems in increments or in portions of the area if they know which areas utilities are going to be available for and which areas development is going to proceed in fairly soon.

Q Does the city have plans for that type of development on the Atrisco grant?

A Yes. Right now the city has in its current capital improvement plan a major water facility, the college trunk water facilities in the area immediately north of I-40 and west of Coors on Atrisco and there is a golf course going in that area on Atrisco grant land, at least most of it is on Atrisco grant land.

Q Is it a fair statement to make that when the need arises that land can and will be developed?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Do you recall Mr. Arkin asking you about land being held in trust for the university and he asked you whether it was being held for university purposes and you said that it was not?

A Yes.

Q What is it being held for, what has it been projected for?

A Well, the property that we were talking about was the land on the southeast mesa which is being held for the University of New Mexico. There have been a series of meetings between the university board of regents and various developers, specifically Dale Bellamah, about development of that 11,000 acres from which the university would profit.

There have been meetings between our department and the Dale Bellamah representatives about that as well.

Q Is that the same Dale Bellamah who is developing Taylor Rancho on the northwest?

A Yes.

Q And who is developing Loma del Norte on North Albuquerque Acres?

A Yes.

end t

Q Do you recall Mr. Arkin asked you about North Albuquerque Acres and he asked you if there were problems in developing that and you said there were problems.

Do you recall that?

A Yes.

Q The 1985 land use plan mentioned the problems with respect to North Albuquerque Acres, is that correct?

A Yes.

Q The 1985 land use plan said that North Albuquerque Acres must overcome the handicaps of poor platting and the ownership pattern before it can compete with undeveloped lands to the south.

Do you recall that?

A Yes.

Q What was meant by handicaps of poor platting and the ownership pattern?

A Well, North Albuquerque Acres is a gridiron subdivision Amttern which does not recognize the natural drainageways that run through the area.

It's laid out in one acre lots which are genrally too large for development in that area and the scattered ownership, of course, makes it very difficult to work with.

Q Is it fair to say thatRio Rancho Estates is gridiron platted as well?

A Yes.

Q Is it fair to say that Rio Rancho Estates has scattered ownership as well?

MR. ARKIN: Objection.

THE COURT: I don't see what the relevance is Sustained.

MR. KAUFMAN: I can make an offer at the side bar.

THE COURT: I know what you are trying to say, but it doesn't come in that way.

Q Am I correct in saying that the 1985 land use plan did not foresee the need for developing North Albuquerque Acres within the next 20 years?

A That's right.

Q Now, do the problems in North Albuquerque Acres mean that North Albuquerque Acres cannot be developed?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained. We have been through this. This is a question for the jury. Nobody said it can't be developed at all.

MR. KAUFMAN: I think that is what Mr. Arkin is trying to argue.

THE COURT: I don't think so. Mr. Arkin's position is that there are so many impediments in it that no reasonable person would go in and try and develop it. That's his point.

Q Mr. Carruthers, have reasonable people gone in and developed North Albuquerque Acres?

MR. ARKIN: Objection.

THE COURT: Sustained. The word reasonable is what he objects to and I sustain it. It is perfectly obvious why I sustained it, Mr. Kaufman.

Q Mr. Carruthers, have people gone in and developed North Albuquerque Acres?

MR. ARKIN: Objection; asked and answered.

THE COURT: Sustained, it is in the record.

MR. KAUFMAN: Can I have EM, the potential for development document.

Q Mr. Carruthers, referring to Exhibit EM, which is the document entitled "Development Potential of Albuquerque," which was issued in 1972, do you recall Mr. Arkin directing your attention to that figure 3?

Figure 3 on page 10 which has to do with arroyos?

A Yes.

Q There is a section on this figure with a darkened-in area which represents arroyos?

A Yes.

Q Does the presence of those arroyos make those areas of land unavailable for development?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. KAUFMAN: Your Honor, this was not --

THE COURT: This has all been in. The jury has heard it. Go on to something else.

MR. KAUFMAN: I never asked this --

THE COURT: Mr. Kaufman, go on to something else.

We are waiting, Mr. Kaufman.

Q Mr. Carruthers, is it accurate to say that arroyos exist in virtually all parts of Albuquerque?

A Yes, except for the valley floor.

Q Is it fair to say that the main parts of Albuquerque as they exist now are all built around arroyos?

A Yes.

Q Directing your attention to Rio Rancho Estates, are there similar types of arroyos running through that property?

A Yes.

Q Can you point them out to us on the map?

(Witness complies.)

A These are the major arroyos in Rio Rancho.

Q Do you recall Mr. Arkin asking you about a Jose Eglado?

A Yes, I do.

Q Do you recall him asking you if Mr. Eglado worked for the planning department?

A Yes.

Q How long was Mr. Eglado with the planning department?

THE COURT: I struck the testimony that Mr. Arkin tried to elicit regarding Mr. Eglado.

MR. KAUFMAN: Your Honor, that was an earlier portion. Then he went on later and asked him about him again.

THE COURT: Go on to something else.

Q Do you recall Mr. Arkin asking you if the 1975 plan called for satellite communities and you said that it did?

A Yes.

Q Can you show us on Exhibit 53, which is the plan, where those satellite communities were projected for?

A Yes. There was one shown over here on the west side, west of the volcanoes. One up in North Albuquerque Acres. Another one down in the southwest area on the Pajarito land grant.

Q All of that is within Bernalillo County, is that right?

A Yes.

Q Do you recall Mr. Fleming asking you if the village of Corrales was an area that people who worked in Albuquerque preferred to live?

A Yes.

Q You said that it was?

A Yes.

Q What is the approximate population of the village of Corrales?

A It's approximately 3500 people, I believe.

Q Do you recall Mr. Fleming and Mr. Lavinsky reviewing the 1972 vacant land study with you and having you define again what primary land was and what secondary land was?

A . Yes.

Q With the exception of the developed portion of Rio Rancho Estates, would the rest of Rio Rancho Estates be considered primary or secondary?

MR. ARKIN: Objection, if your Honor please.

THE COURT: Sustained.

Q Am I correct in stating that part of the definition of secondary land is that utilities are not in place?

A That's right.

Q Do you recall Mr. Fleming asking you if you foresee growth in the south valley?

A Yes.

Q What was your answer?

A I said that we were not recommending intensification of development anywhere in the valley area, north or south valley.

Q Mr. Fleming asked you about the north valley as well, is that correct?

A Yes.

Q Do you recall Mr. Fleming asking you if you foresee growth on the northwest mesa and you said that you did?

A Yes.

Q Did Mr. Fleming ask you if you foresee growth in the northeast?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Do you foresee growth in the northeast, Mr. Carruthers?

A Yes.

MR. ARKIN: Objection.

THE COURT: Overruled.

Q The answer is yes?

A Yes.

Q Do you recall Mr. Fleming asking you about one of the transactions given as an example in This is My Land, the Quaker Heights land transaction?

A Yes.

Q And he asked you if that was comparable land to Rio Rancho Estates?

A Yes.

Q And you said it was comparable. Do you recall that?

A Yes, it's residential land also.

Q Because it's residential land?

A Yes.

Q Is Buena Ventura a division which is zoned R-3 comparable to Rio Rancho?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q You were defining comparable in terms of the Quaker Heights land being residential, is that correct?

A Yes.

Q Do you recall Mr. Fleming asking you about a new high school that had been built on the west mesa?

A Yes.

Q Since 1965 have any new high schools been built in the northeast quadrant?

MR. FLEMING: I object to that.

THE COURT: Sustained. It is in the record.

MR. KAUFMAN: It is not in the record, your Honor.

THE COURT: He said so.

MR. KAUFMAN: I don't believe so.

THE COURT: I do.

MR. KAUFMAN: Your Honor, in case it is not in the record, may I ask the question?

THE COURT: Mr. Kaufman, will you please go on and confine yourself to redirect.

MR. KAUFMAN: Your Honor, everything I have asked --

THE COURT: Mr. Kaufman.

Q Do you recall Mr. Fleming asking you about the city's continuing policy of encouraging in fill within the city?

A Yes.

Q Has that policy been successful in any degree?

A Yes.

Q Can you explain how?

A Well, if you look at the land area that was in the city in 1962, I think over half of that has been developed that was vacant in '62.

Q Does the 1972 vacant land study give the figures with respect to vacant land within the city limits as of 1962?

A Yes, as I recall it was something like 20,000 acres.

Q 20,000 acres of vacant land within the 1962 municipal limits, is that correct?

A Yes.

Q By 1972, if you were still utilizing those same '62 boundaries, am I correct in saying that there were only 9670 acres of vacant land within that area?

A Yes.

Q Am I correct in saying, then, that the policy of in fill was successful to the extent of filling in over 10,000 acres?

A Yes.

Q To the extent that the in fill policy was not successful, I gather than that Albuquerque's growth extended outward from established areas as of 1962, is that correct?

A Yes.

Q What has been the predominant direction of Albuquerque's outward extension since 1962?

A To the northeast, primarily north, northeast.

THE COURT: Which is it, north or northeast? You keep talking in quadrants here. That is the basis of reference for the jury.

THE WITNESS: By quadrants it is northeast?

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

(Continued on next page.)

T4A. AM gtjb

MS. HYNES: The government calls Ralph Avellanet.

XXX RALPH ALPHONSE AVELLANET,

called as a witness by the government, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Avellanet, I am going to ask you to keep your voice up so all of the jurors can hear the answers to my questions.

Are you testifying here under subpoena?

A Yes.

Q Where do you live?

A 311 Sky Hill Road, Alexandria, Virginia.

Q How old are you?

A 41.

Q What is your educational background?

A I have two degrees. I'm a metallurgical engineer graduating from Colorado School of Mining, and I have a master's in business administration from Harvard.

MR. FLEMING: I am sorry, your Honor, I can't hear him.

THE COURT: They complain they can't hear you.

A I have a master's in business administration from Harvard Business School in Boston.

Q What has been your most recent employment?

A I was vice president with Hammer, Siler, George Associates, in Washington, D.C.

Q What is Hammer, Siler, George Associates?

A It is an economic consulting firm dealing largely in matters of real estate and community development policy.

Q Where are their offices located in addition to Washington, D.C.?

A Atlanta, Georgia, and Denver, Colorado.

Q What did you do for Hammer, Siler,George?

A I was a market economist, working largely in the area of housing for public clients.

Q Can you explain that --

A Planning bodies, cities, urban renewal agencies.

Q And what does a marketing economist do for those public planning bodies?

A In my case, I estimated the demand and need potentials for housing within jurisdictions and recommended policies and goals for public bodies and private developers and others to carry out.

Q When did you first join Hammer, Silver & George Associates?

A In 1967, the end of June.

Q And did you recently leave Hammer, Siler, George Associates?

A As of the last of August I left, 1976.

Q What was the reason?

A We had a business retrenchment and I was one of several laid off.

Q Have you recently accepted other employment?

A Yes, I have recently accepted a position with the Bureau of Mines of the Department of Interior with the Federal Government.

Q Prior to joining Hammer, Siler & George Associates in 1967, what was your employment?

A I was an economist/planner with Harman, O'Donnell & Henninger in Denver, Colorado.

Q What is Harman, O'Donnell & Henninger?

A Harman, O'Donnell & Henninger is a land planning firm that does design of land for development purposes, analyzes the market for development.

Q What did you do for Harman, O'Donnell & Henninger?

A I did primarily market analysis work.

Q And what do you mean by market analysis work? Can you explain that to the jury?

A Well, when we would have an assignment of examining what were the best development potentials for land, I was responsible for analyzing what kind of markets, what kind of uses would be economically feasible for development on that land and over what span of time.

Q When you say that you were responsible for determining what kind of market, what do you mean by that?

A Well, I look at different uses of land as a market.

In the case of putting homes on land, I'm interested in the number of people, the households in an area and to what extent I might be able to attract them or could see the developer attracting them to a certain kind of development on the land in question.

Q So in determining market, are you talking about determining demand for a particular piece of land?

A Yes.

Q And are you talking about absorption of a particular piece of land?

A Yes. Absorption is a word used to define how many units might be sold or rented over a span of time.

In talking about land typically, we talk about acres absorbed per year, acres put to development use and salable.

Q Did there come a time when Harman, O'Donnell &

Henninger was retained to do a study for Rio Rancho Estates?

A Yes.

Q And approximately when was that?

A To the best of my recollection, late August, 1965.

Q Was a proposal submitted to Rio Rancho Estates in connection with a proposed study by Harman, O'Donnell & Henninger?

A Yes.

Q I show you what has been marked as Government's Exhibit 976 for identification, and ask you if this is a proposal which was submitted to Rio Rancho Estates in August of 1965 (handing).

A Yes, it was.

Q Do you recognize the signature on the third page?

A Yes. The signature is of Rodney Katzenburg.

MS. HYNES: I offer 976.

THE COURT: Yes, Mr. Arkin?

MR. ARKIN: Mr. Avellanet, you didn't write this document, did you?

THE WITNESS: To the best of my recollection, I did not.

MR. ARKIN: You don't know whether Harman, O'Donnell & Henninger, over the years, has kept copies of whatever proposals they may or may not have made or may have made to potential clients, isn't that so?

You don't know -- excuse me. Withdrawn. Strike that.

You don't know what the documents or formal proposals Harman, O'Donnell & Henninger have kept over the years in their files?

THE WITNESS: Since I left?

MR. ARKIN: Since you left.

THE WITNESS: I do not know what they have kept.

MR. ARKIN: You left in 1967?

THE WITNESS: That's correct.

MR. ARKIN: Your Honor, on two bases, I object.

One is that we understand that Mr. Katzenburg, who is the author of this letter, purported author of this letter, is on the will call list.

Two, I don't see the foundation for this document coming in under this witness.

The third objection is that it would only be admissible, if at all, against Rio Rancho Estates.

MS. HYNES: This document was produced by the corporation.

THE COURT: Let me see it.

(Handing to court.)

THE COURT: Objection overruled.

MR. RUBINO: There is no indication that it was received by anyone, your Honor.

I call your attention to page 3 of that document.

MS. HYNES: Your Honor, I will get to that.

THE COURT: I allow it in as a communication from Herman, O'Donnell & Henninger to Mr. Oberman, and that will allow it in against anybody for the time being.

It may be subject to a motion to strike at a subsequent time.

XXX (Government's Exhibit No. 976 was received in evidence.)

MS. HYNES: At this time the government also offers Exhibit 984.

We are not offering the writing at the top of the page.

MR. ARKIN: We have no objection.

XXX (Government's Exhibit No. 984 was received in evidence.)

Q I show you what has been marked as Government's Exhibit 983 for identification, and ask you if you recognize the signature on page 3 of that (handing).

A Yes.

Q Who is John Sommerholder?

A To the best of my recollection, he was the office manager of Rio Rancho Estates in Albuquerque.

Q And who is Mr. Sommerholder's superior?

MR. RUBINO: Objection, your Honor..

THE COURT: If he knows, I will take it.

Q If you know.

A To the best of my recollection, he reported to Mr. Oberman, Mr. Herman Oberman.

Q Who is Rodney Katzenburg?

A Rodney Katzenburg was my supervisor.

Q At Harman, O'Donnell & Henninger?

A At Harman, O'Donnell & Henninger.

MS. HYNES: The government offers 983 in evidence.

MR. ARKIN: I take it you are unable to recognize Mr. Sommerholder's signature?

THE WITNESS: That's correct.

MR. ARKIN: Objection. No foundation, your Honor.

THE COURT: Let me see it.

(Handing to court.)

MS. HYNES: Your Honor, this was also produced by the corporation.

(Handing to the court.)

(Pause.)

THE COURT: Objection overruled.

XXX (Government's Exhibit No. 983 was received in evidence.)

(Continued on next page.)

Q I show you what has been marked Government Exhibit 983-A, and directing your attention to the top part of this page, do you recognize whose initials those are?

A Yes.

Q Whose initials are they?

A RMK, Rodney M. Katzenberg.

MS. HYNES: The government offers 983-A for identification.

MR. RUBINO: May I ask a question, your Honor?

THE COURT: Yes.

MR. RUBINO: Could you please tell us, Mr. Avellanet, who is Mr. Rodney Katzenberg?

THE WITNESS: He was my supervisor at the firm of Harman, O'Donnell & Henninger.

MR. RUBINO: And will you tell us where he is now?

THE WITNESS: He is -- at this moment?

MR. RUBINO: Yes.

THE WITNESS: He lives in Denver.

MR. RUBINO: What is his occupation in Denver?

THE WITNESS: I believe he --

MS. HYNES: Now, your Honor?

MR. RUBINO: Yes.

THE WITNESS: I believe he is an independent real estate consultant.

MR. RUBINO: I object to this document, your Honor.

THE COURT: Let me see it.

(Handing to the Court)

THE COURT: Objection overruled.

(Government Exhibit 983-A received in evidence)

xx

MS. HYNES: Your Honor, may I read from portions of these documents?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 984 in evidence to the jury)

(Ms. Hynes read from Government Exhibit 976 in evidence to the jury)

Q Who was Robert K. Walsh?

A He was an engineer in Albuquerque who was consulting and doing contract work for Rio Rancho Estates.

(Ms. Hynes read from Government Exhibit 983 in evidence to the jury)

Q What is USGA mapping?

A Well, the U.S. Geological Survey provides topographic maps of many parts of the United States and this is a common map used to provide information on the contours of the land.

(Ms. Hynes continued to read from Government Exhibit 983 in evidence to the jury)

Q Mr. Avellanet, in connection with Harman, O'Donnell's assignment, the paragraph I just read, was that basically your assignment in connection with your report?

A Yes.

(Ms. Hynes continued to read from Government Exhibit 983 in evidence to the jury)

Q Was that also an assignment of yours in connection with this proposal?

A Yes.

(Ms. Hynes continued reading from Government Exhibit 983 in evidence to the jury)

(Ms. Hynes read from Government Exhibit 983-A in evidence to the jury)

Q Mr. Avellanet, in connection with your assignment to do a study for Rio Rancho Estates, did you contact any local planning officials?

A Yes.

Q Who did you contact?

A I contacted the city planning department and spoke with a Mr. George Carruthers and possibly others.

Q And what information did you obtain from the city planning department?

MR. FLEMING: I object.

MR. RUBINO: I object.

THE COURT: Sustained.

Q I show you what has been marked Government Exhibit 60 in evidence (handing).

Have you seen that before?

A Yes.

Q Where did you first see that document?

A To the best of my knowledge, I would have seen it first in two places --

MR. ARKIN: I move to strike it, your Honor.

THE COURT: Sustained.

Did you see it during the course of your work on this contract?

THE WITNESS: Yes.

THE COURT: All right.

Next question.

Q Did you utilize it in connection with preparing a report from Rio Rancho Estates?

A Yes.

THE COURT: Sustained.

Q Government Exhibit 983 in evidence states that your assignment was to collect information from local sources and basic analytical data to ascertain the overall growth patterns and influence on the development of the subject site.

Did you do that?

A Yes.

Q And what did you do?

MR. RUBINO: Objection.

THE COURT: Sustained.

Q Did you have discussions with Mr. John Sommerholder and Mr. Bob Walsh in connection with the preparation of your study?

A Yes, I did. I met with them in September.

MR. ARKIN: You answered.

A 1965.

Q And what were your discussions with Mr. Sommerholder and Mr. Walsh?

MR. FLEMING: Object, your Honor.

THE COURT: Overruled.

A I discussed with them any information that they could give me with regards to the market potentials for that land under study, the development constraints, costs of development, selling prices of land around Albuquerque, names of people to see with regards to getting additional information and other things, I'm sure.

Q When you mentioned development constraints, development constraints with respect to what?

A Well --

Q Was this development constraints in respect to Rio Rancho or in respect to other property?

A I'm sure it was for Rio Rancho and I'm sure it was, in a general sense, in terms of Albuquerque.

MR. RUBINO: Objection, your Honor.

THE COURT: What?

THE WITNESS: In other words --

MR. RUBINO: Your Honor, I am objecting to this.

THE COURT: Overruled.

MR. RUBINO: Your Honor, may I have the date if I could for the meeting with Sommerholder and Walsh.

THE COURT: He said September.

Go ahead.

A If I can clarify, in that case, I had not done any work --

THE COURT: The question is, what do you mean by constraints?

THE WITNESS: Constraints?

With regards is there any land in Rio Rancho Estates, land that we were to look at, that one couldn't build upon.

Perhaps the land was not going to be available or perhaps it might turn to quicksand with rain or it was in the drainage ditch, this type of thing.

MR. ARKIN: I move to strike that, your Honor.

THE COURT: Overruled.

Q Your assignment did not include all of the acres at Rio Rancho, is that correct?

A Yes.

Q And what area did your assignment include, to the best of your recollection?

A Well, to the best of my recollection, it included lands around 528, Highway 528.

Q And what is Highway 528?

Let me ask you to identify that on Defendant Exhibit A in evidence where 528 is.

Can you point out where 528 is?

A (Witness complies)

Q Mr. Avellanet, can you just step down so the jury can see where 528 is.

A (Witness indicating)

Q And your assignment in connection with preparing a study covered what land, to the best of your recollection?

A This land and then to the extent made -- it related to this land, any of this land that was not platted (indicating).

MR. ARKIN: So the record might be clear, would your Honor perhaps have that marked?

THE COURT: I think you better take a marker and put a circle around the area that you studied.

MR. ARKIN: Ms. Hynes, do you want one of our markers?

MS. HYNES: Yes.

Q Can you outline with this red marker the area east of Highway 528 which you --

THE COURT: Don't give it to him. Just say the area he studied.

A Our primary attention was to the land east of 528 and secondary attention to the land that had not been platted as of the time we came on the job (indicating).

Q The land that had not been platted that you testified you gave your secondary attention to, that was land that was on the west side of 528?

A That's correct.

Q What was the reason for giving your primary attention to the area east of 528?

A Because this was the land that we saw as most marketable to the Albuquerque housing market.

Q And what about the area west of 528 in connection with the Albuquerque housing market?

A We saw very little potentials in the long term. The term that we were discussing, concluding -- we basically based our development period, the distance into the future that we would be concerned with on the expected rate that Rio Rancho Estates would sell the balance of its land on the national market.

Q And what period was that? Was there a period fixed?

A Based on the estimate of 2,000 acres a year, I believe for planning purposes --

MR. RUBINO: Excuse me, your Honor. May we have a side bar conference, your Honor?

THE COURT: Overruled.

A It worked out to 18/19 years.

Q Where did you get the information with respect to 2,000 acres per years being sold?

A Well, this was based upon Rio Rancho Estates current sales level.

Q At the time you were hired?

A Yes.

Q And the current sales level was basically 2,000 acres being sold nationally per year?

A It was either that of 1750, and we knew or we were told that sales had picked up, and then we also anticipated tapping some of the Albuquerque market in the two prospective developments that we suggested.

Q And where were those two prospective developments which you suggested for tapping the Albuquerque market located?

A Well, one was here in the southeast portion of the whole property.

Q Was that east of Highway 528?

A Yes, east of 528, and west of the Village of Corrales.

The second proposed local development was north of the first --

MR. FLEMING: North of what?

A -- development, again, east of 528 and extending to the Rio Grande River.

Q The two areas that you have just outlined that you saw for tapping potential local market in Albuquerque were both east of Highway 528, correct?

A Both.

Q And was that land that was east of Highway 528 land that was offered for sale nationally, as far as you knew?

A No, it was not at that time.

Q And was land west of 528 offered for sale nationally?

A There was portions of this land sold nationally.

Q Did you have discussions with Mr. John Sommerholder and Robert Walsh in connection with any demand from the local Albuquerque market for housing with respect to Rio Rancho?

MR. RUBINO: Objection, your Honor.

THE COURT: Overruled.

A Yes. I discussed with both, seeking to get as much information as I could about the nature of the residential market in Albuquerque.

Q And what did they tell you with respect to the Albuquerque market?

A Well, they gave me what information that I asked for and that they knew.

There were many specific elements.

Q Can you give us your best recollection of the substance of what they told you with respect to the direction of growth of Albuquerque?

A To the best of my recollection, they indicated the trend of growth was east, northeast.

They cited some developments on the west side that they were familiar with, but most of the development they indicated was to the east.

Q And did they give you any specific information with respect to the development that there did exist on the west side at the time?

A Well, they gave me some names. One was Paradise Hills, located south of Rio Rancho Estates, of which they estimated there were about 500 homes, and I recall them saying that there were 127 vacant.

Q Of the 500 homes?

A Yes.

Q Do you recall any other specific subdivision that they mentioned in that conversation?

A Well, they mentioned one just immediately south of the --

MR. ARKIN: If your Honor please, may we have it determined whether all of these conversations were with Walsh and Sommerholder together, whether they were separate and who said what?

There are two separate persons.

THE COURT: That is true.

You are generalizing what was told to you.

Can you be more specific as to who told you what?

THE WITNESS: Well, to my recollection, this was a conversation with both Bob Walsh and John Sommerholder, and I believe John Sommerholder mentioned 127 vacancies in Paradise Hills.

THE COURT: Go ahead, Ms. Hynes.

MS. HYNES: Thank you, your Honor.

Q My last question was, was there mention of any other subdivision in addition to Paradise Hills on the west side during that conversation?

A Yes, I'm sure. Mr. Walsh was quite familiar with development on the west side. There wasn't really very much development. And I'm sure he mentioned several names of either proposed developments or some that had gotten underway, and I'm sure that I asked -- I asked this specifically, because it was important for my analysis of Rio Rancho's potentials in the Albuquerque real estate market.

MR. FLEMING: If your Honor please, could we define what the witness means when he says "I'm sure"; whether he is saying he is sure or whether he is saying he is guessing.

THE COURT: Well, when the witness says, "I'm sure," it means "I'm sure."

I can't see that it means "I guess."

You can cross examine.

MR. FLEMING: I agree with that on the record.

I was just wondering if it could be determined what he does mean.

THE COURT: This is the witness' statement, Mr. Fleming.

MR. FLEMING: Right.

Q Did Mr. Walsh, in that conversation that you had with him in discussing the west side, did he characterize the extent of growth on the west side?

MR. ARKIN: Your Honor, objection, because on Mr. Avellanet's testimony, Mr. Walsh is an independent contractor.

THE COURT: I don't understand him to be an independent contractor.

MR. ARKIN: I thought that's what he testified to.

THE COURT: Walsh?

MR. ARKIN: Walsh, yes.

THE COURT: He is an employee of Rio, isn't he?

MR. ARKIN: Not at that time.

MS. HYNES: Let me clarify this, your Honor.

Q The conversation that you have been testifying to, both Mr. Sommerholder and Mr. Walsh were present, is that correct, to the best of your recollection?

A To the best of my recollection.

THE COURT: Did this come out of one conversation?

THE WITNESS: I don't know.

I visited Albuquerque in September for probably two or three days, and I'm sure -- you know, normal practice, I would have met with Mr. Walsh or Mr. Sommerholder the first thing and then would have met with them again, let's say toward the end of my reconnaissance, to kind of get some last questions answered and kind of review perhaps what I may have found.

This is my normal modus operandi on a recon trip.

[illegible] COURT: So you don't know whether everything you have told us came from Walsh alone or Sommerholder alone or in a joint conversation with them?

THE WITNESS: No, I do not.

THE COURT: What is the point about Walsh not being an employee of Rio?

Come up to the side bar.

(At the side bar.)

MR. ARKIN: May I speak, your Honor?

THE COURT: Yes.

MR. ARKIN: As I understand it, Mr. Walsh was never an employee of Rio Rancho or AMREP. He is an independent contractor. He is a man who does platting and surveying and road work and that kind of thing in the Albuquerque area. He has his own company and he does his own kind of development.

He was retained as an independent contractor for a period of time in the '60's, but he never --

THE COURT: For what purpose?

MR. ARKIN: Well, he was retained, as I understand it, to do some platting and some surveying and under his aegis he did some road blading or road construction. But, again, he was never an employee.

THE COURT: Ms. Hynes.

MS. HYNES: But, your Honor, the witness did not testify that he is an employee. I believe he is hired, he has his own firm.

The documents that we have gotten into evidence specifically describe meetings with Sommerholder and Walsh.

The memo from John Sommerholder to Herman Oberman talks about briefing Bob Walsh. He is obviously acting as the agent. When is an independent contractor --

THE COURT: The objection is overruled.

(In open court.)

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Avellanet, in your conversations with -- withdrawn.

Let me first ask you, if it your best recollection that when you did have meetings in September, that the meetings that you had, whether they were one or two, was always with Mr. Walsh and Mr. Sommerholder together? Is that your best recollection?

MR. FLEMING: He just said the opposite --

MR. RUBINO: That's correct.

MR. FLEMING: -- in response to your Honor's question. He said he didn't know.

THE COURT: He said he didn't know. He didn't say the opposite, he said he didn't know.

MR. FLEMING: You are right. I am half right.

THE COURT: All right.

Q What is your best recollection as to whether --

A My best recollection would be that I met with both of them initially, likely met with John Sommerholder separately and may have met with Mr. Walsh separately.

THE COURT: In view of the ruling I made at the side bar, I don't care whether these conversations come from a joint meeting or individual meetings.

Go ahead.

MS. HYNES: Okay, your Honor.

Q Mr. Avellanet, in the conversations that you had with Mr. Walsh, did he describe the extent of growth on the west side of Albuquerque?

A To the best of my recollection, he did.

Q And how did he describe it?

A Well, as very limited. He stated there were a few developments and he mentioned them.

THE COURT: I gather you don't remember the names aside from Paradise Hills?

THE WITNESS: Well, there is Volcano Cliffs, Snow Vista, College Heights. That's all I can recall.

THE COURT: Go ahead.

Q In addition to describing the growth on the west side as limited, did Mr. Walsh describe the direction of growth of Albuquerque?

A Yes.

Q And what did he tell you?

A He indicated it was primarily east and northeast.

Q Did you prepare preliminary analyses and conclusions in connection with your assignment for Rio Rancho Estates?

A Yes, I did.

Q I show you Government's Exhibit 978 for identification, and ask you if you can identify that (handing).

A Yes. This was a memorandum to Rio Rancho Estates, dated November 2, 1965.

Q Did you prepare this, to the best of your recollection?

A To the best of my recollection, I prepared this.

Q And was this sent to Rio Rancho Estates?

A To the best of my recollection, it was.

MS. HYNES: We offer 978.

MR. ARKIN: Do you know who signed this at Harman, O'Donnell?

THE WITNESS: I do not.

MR. ARKIN: Your Honor, the same objection, and I presume the same ruling?

THE COURT: Same ruling.

Let me see it.

(Handing to the court.)

XXX (Government's Exhibit No. 978 marked for identification received in evidence.)

THE COURT: All right, we will adjourn for lunch.

(Luncheon recess.)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

RALPH AVELLANET, resumed.

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor.

Your Honor, may I read from a portion of 978 in evidence?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 978 in evidence to the jury)

DIRECT EXAMINATION CONTINUED

BY MS. HYNES:

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Q Mr. Avellanet, after the November 2, 1965 letter was sent to Rio Rancho Estates, did there come a time when you had a meeting with representatives of Rio Rancho Estates?

A Yes, there was.

Q Approximately when was that meeting?

A Mid-December.

Q Of 1965?

A Yes.

Q Where was the meeting held to the best of yur recollection?

A It was held in Albuquerque and it was either held at their downtown Albuquerque offices or out at the project site.

Q You mean at the 1429 Central address?

A Yes.

Q To the best of your recollection, who was present at this meeting?

A To the best of my recollection, Rodney Katzenberg, myself, Mr. Herman Oberman, Mr. John Summerhalder and possibly Mr. Walsh.

Q At the meeting that you just testified to in December of 1965, was there a discussion with respect to your preliminary conclusions contained in the November 2, 1965 letter, which is Government Exhibit 978 in evidence?

A Yes, to the best of my recollection that memorandum was reviewed by Mr. Katzenberg.

Q Was it reviewed with Mr. Oberman?

A Yes.

Q Do you recall any discussion about the two paragraphs that I just read concerning the expected growth, continued growth of Albuquerque to the east and northeast?

A I am sure there was discussion. I don't remember the specifics.

Q Do you recall whether there was any dispute by Mr. Oberman with respect to those conclusions?

MR. RUBINO: I object, if your Honor please.

THE COURT: Sustained.

Q The November 2nd letter also refers to out of state market.

Was there a discussion at the December meeting with respect to demand for housing from the out of state market?

A There was a discussion at that meeting specifically as to the anticipated level of sales to the national market and the likelihood of buyers of the land relocating to the property and seeking to live there.

Q To the best of your recollection, did Mr. Oberman say anything with respect to what that demand would be?

MR. RUBINO: I object to the form of the question, your Honor.

A Yes, he did.

THE COURT: Don't lead the witness, Ms. Hynes. It is on direct.

Q To the best of your recollection, Mr. Avellanet, tell us what was said at that meeting with respect to the demand for the local market and who said it?

A We came to that meeting with some rough estimates of what we thought were -- what was the likelihood of national lot buyers coming to that property to live. These were put out and then Mr. Oberman gave us a rundown of the operating assumptions, the operating framework with which the Rio Rancho operations were carried out.

Specifically, he cited that perhaps twenty-five percent of the lot buyers think about coming to Rio Rancho, but invariably something happens, they may die, they may no longer be interested or what have you, and that as a working assumption for the operations 95 percent of the buyers do not come and this was used by myself in figuring what might be the likely future population of the Rio Rancho Estates development pertaining to the national sales market.

Q Were any examples given with respect to that 95 percent figure?

A To the best of my recollection, Mr. Oberman cited the experience of his company in the Rainbow Lakes operation in Florida wherein they had sold about 18,000 lots and had 300 homes after six years.

Q Was there any further discussion with respect to the out of state market?

A There may have been.

Q I show you Government Exhibit 979 for identification. I ask you if that refreshes your recollection with respect to whether there was any further discussion with respect to the out of state market or sale of lots at Rio Rancho?

A Yes. There were two additional developments mentioned. A fourteen acre development in Florida of which there were sixty homes after twenty years and in New York there was a 1200 acre mountain land of which there were nine homes.

Mr. Oberman summed up to my recollection the thrust of the program, we sell dreams.

Q You said that there was a fourteen acre subdivision in Florida.

Was that fourteen acres of 1400 acres?

A 1400.

Q At the meeting that you attended in December that you have testified to where Mr. Oberman was present, was there discussion about topics other than the out of state market?

A Yes, there was. There was discussion with regard to the national sales rate, the rate at which they were selling land.

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Q Who was making these statements and giving this account?

A To the best of my recollection, Mr. Oberman stated that the sales were running in the order of 1750 acres a year and that was a good yardstick to use with regards to the outlook for national sales in the future recognizing any number of factors could influence the sales level.

To my recollection they had embarked on some new sales efforts and were hopeful. There was a contingency of the government regulations and legislation in the wings that might affect the nature of the business.

Q Were these new sales efforts described to you? What were they?

A To my recollection they were beginning a dinner program.

Q Were there any other topics discussed at this meeting with Mr. Oberman?

A There were. There were specific items with regards to certain parcels of land, whether we ran a road here or there.

As I recall it was an all day meeting so we covered pretty much everything that was on our mind at that time.

Q Was there a discussion about an annual pick-up charge?

A Yes. This was of some concern to Mr. Oberman. As I recall, their contract for acquisition of that land required as a minimum that they bought $800,000 worth of land annually. They could buy more, but they had to buy that much a year and the land -- most of the land was priced at a little under 200 an acre, $200 an acre.

As I recall, all the land west of Route 528 and the land to the east was at 400 an acre, approximately.

In calculating, this worked out to a required pick-up of 2,000 acres a year and, as I recall, Mr. Oberman, that was one of his concerns, that their current sales definitely was less than 2,000 acres a year and they didn't wish to inventory more land than necessary.

Q You spoke about a conversation with Mr. Oberman about the operating framework not expecting more than 5 per cent to move to the property.

Was there a discussion about --

MR. RUBINO: I object to the form of that question, your Honor.

THE COURT: Sustained.

What else was said?

THE WITNESS: Is that a question to me?

THE COURT: Yes.

THE WITNESS: Oh, I believe Mr. Oberman indicated that he was reluctant to think seriously about a new product that we had suggested and this was something we called retirement villages to be located in some of the unplatted land.

We felt that there might be interest amongst the national buyers for living in a village setting in contrast to the plans for half acre and one acre lots feeling that they would enjoy the proximity and the conveniences that might come with a tighter development.

We had suggested that as a recommendation. We were also concerned, as consultants, with the possibility that more than 5 per cent of the buyers might come with regards to handling this number of people on the property set aside for actual development.

There were other statements that I can recall that salesmen sell the best pfoduct first --

MR. RUBINO: Excuse me, your Honor, may we know who made the statements that the witness refers to?

THE WITNESS: These statements were by Mr. Oberman.

Your question was what did Mr. Oberman say.

He stated concern about the salesmen selling good products first. I think that may have pertained to the idea of why they sold lots initially furthest west and then sort of worked eastward.

There may be other statements that he said, your Honor, but I would have to see my own notes to be refreshed.

Q Mr. Avellanet, I will show you what has been marked Government Exhibit 979 for identification. You testified that Mr. Oberman had a reluctance to this retirement village.

Do you recall any statements that he made with respect to placement of utilities and the need for placement of utilities?

A Well, I had understood with regards to their operating plan, if you will, that they anticipated that most of the buyers would choose -- who wanted to settle on the land -- would choose to accept the even-Steven lot swap program; that they would trade their lot, wherever it may be, for a lot in the area that was under development and that initial utility service would be there.

I believe also that they had begun to accumulate and/or save lots in certain locations scattered around the units that they had sold simply as perhaps a cautionary measure in case there was ever need for an additional development area similar to the one that was under way.

(Continued on next page.)

Q Can you point out on this Defendants' Exhibit A the area where development was under way?

A The development was under way in this area (indicating).

Q That is the southeast corner of unit 16?

A That's correct.

Q I show you Government's Exhibit 972 for identification, and ask you, did you receive this letter (handing)?

Do this come to you?

A Yes. It came to me from Mr. Katzenberg.

Q And is that your handwriting on it?

A Yes.

MS. HYNES: I offer 972.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Avellanet, with respect to 972 for identification, is all of this handwriting in pencil and ink, which is about that piece of paper, yours?

A Except for Mr. Herman Oberman's signature.

Q This (indicating)?

A Would be mine.

Q And that is yours (indicating)?

A That is mine.

Q And these were notes you made at that time?

A Yes.

That letter --

Q I am just asking you to answer yes or no.

These were notes you made at that time, when you received this letter?

A Over the span of a few weeks.

Q You made them over a span of a few weeks?

A Yes.

Q You didn't have a note pad, you put it on this piece of paper?

A Those were not all the notes that I made over the span --

Q These were some of the notes which you made, is that correct?

A That's correct.

MR. ARKIN: If your Honor please, we object to any of the handwriting which appears upon 972 as being just inadmissible for any reason. He can testify to it.

THE COURT: Let me see it.

(Handing to the court.)

THE COURT: Objection sustained.

MS. HYNES: Your Honor, I would reoffer it without the handwriting.

THE COURT: All right.

MR. ARKIN: May I see it again, Ms. Hynes?

MS. HYNES: Yes (handing).

(Pause.)

MR. ARKIN: I think Mr. Rubino should look at it (handing).

MR. RUBINO: I have already indicated to Ms. Hynes that this is Mr. Oberman's signature and I have no objection to its being introduced without the written matter.

MR. ARKIN: We have no objection.

XXX (Government's Exhibit No. 972 received in evidence.)

MR. ARKIN: I take it Ms. Hynes will provide a redacted copy of that?

THE COURT: Yes.

MS. HYNES: Yes.

Your Honor, may I read from 972?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 972 in evidence to the jury.)

BY MS. HYNES:

Q I show you what has been marked as Government's Exhibit 66 for identification, and ask you if you can recognize that (handing).

A Yes.

This is the final report that we presented to Rio Rancho Estates.

Q And did you prepare this report?

A Yes.. I was the author.

Q And was this report reviewed by Mr. Katzenberg?

A Yes.

Q And does your signature appear on the first page of this report?

A It does.

Q And does Mr. Katzenberg's signature appear?

A It does.

Q Was this report sent to Rio Rancho Estates?

A Yes.

Q Do you recall how many copies were sent?

A To the best of my recollection, six.

MS. HYNES: We offer Government's Exhibit 66.

MR. ARKIN: We have no objection, other than the ones we made before.

XXX (Government's Exhibit No. 66 was received in evidence.)

MS. HYNES: Your Honor, may I read from portions of this?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 66 in evidence to the jury.)

Q Mr. Avellanet, the local market penetration that you stated might take place from 1966 to 1985, what land would that be on? Can you point that out?

MR. ARKIN: Objection, your Honor.

Hold on.

That calls for a speculation, what land would that be on.

THE COURT: The land that he decided it should be on.

He is the one who wrote the report.

I gather he said there is some land in Rio Rancho that would be benefitted. He is the one who wrote it. Who better can tell you?

MR. ARKIN: If he is saying what the report contained in writing, that is one thing. But at this point if he is projecting in 1976 what land it might be, I object to it.

THE COURT: He is not saying what he is projecting, he was asked what it was then.

Isn't that the question?

MS. HYNES: That is exactly the question, your

Honor.

A I projected this land east of 528, and this land (indicating).

(Continued on next page.)

Q So the entire strip that you are pointing to is east of Highway 528?

A That's correct. And that was to the extent that they could penetrate the local market, it would be in these two areas.

I don't recall whether I indicated I thought they could sell all of it at the local market for development.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Mr. Avellanet, can you tell the Court and the jury, with respect to this 1,125 acres which you have pointed out as east of Highway 528, what your recommendations were with respect to that land?

A Our recommendations were to develop that with large sites, that is, one to three acre sites, for an exurban population that sought to live out of town in an area where they were away from many people, had access to the river, river bottom, somewheres in there to be allowed to have horses, as I recall, the lots would not necessarily be served by sewer. I have to see it to refresh more specifics.

MS. HYNES: Let me continue reading from Government Exhbit 66 in evidence.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Mr. Avellanet, in connection with preparing this report with respect to the possibility of a demand from a local Albuquerque market for land at Rio Rancho Estates, did you review population studies?

A Yes, I did. I reviewed several.

MS. HYNES: I will now read from page 10 of Government Exhibit 66 in evidence.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Was Stanley Brasher another population study that you analyzed in connection with this report?

A Yes, I reviewed that.

MS. HYNES: Continues on page 10.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q What is the Albuquerque SMSA?

A This is a term of the Census Bureau. It is a statistical -- in this case, it meant Bernalillo County.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Did you also review, Mr. Avellanet, a study by Larry Smith & Company?

A Yes, I did.

MS. HYNES: On page 10.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Did you also study a report by Wilbur Smith & Associates?

A Yes.

MS. HYNES: Continuing, again, on page 10.

Q First of all, let me ask you, Mr. Avellanet, who is Wilbur Smith & Associates, if you know?

A Wilbur Smith & Associates is a national transportation planning firm.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Mr. Avellanet, let me show you Government Exhibit 60-A, which is part of the 1985 land use plan.

On this map, can you point out the Pan American Freeway, I-25?

A Yes. I-25 is an interstate highway running from Sante Fe in the north on down on a north-south basis through Albuquerque and on through the south.

Q So it is the black line, basically, that comes through the northeast sector?

A That's correct (indicating).

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Where is the Coronado Freeway, I-40?

A That is this -- wait a second.

It is right here (indicating).

Q So I-40 is a thin black line?

A At that time, yes.

Q On the northeast quadrant?

A Yes.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Is that in the northeast quadrant of Albuquerque?

A Yes.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Where does the six square miles lie with respect to what quadrant of the city?

A They are in the southeast by my definition there, which is I-40 being the south-north divider.

(Ms. Hynes continued reading from Government Exhibit 66 in evidence to the jury)

Q Mr. Avellanet, can you point out on this map the Pan American Highway and the Second Street Corridor that you mention here?

A Yes.

This is the Pan American Highway and this is the Second Street Corridor.

Q The Second Street Corridor is a red line east of the river north-south?

A Red. It has a lot of commercial strip on it.

Q The Pan American Highway is the black line?

A The black line.

Q In estimating the amount -- the 48 square miles that were available for development in the northeast and southeast areas that you mentioned in your report, did you use this map in connection with that?

A Yes, I did.

Q Can you point out to the jury the areas that you used in determining the 48 square miles, how you did that?

A I can to the best of my recollection.

Q Why don't you use the pointer.

A The colors on this map represent property that is developed. There are structures on it.

Q Which color are you talking about?

A The best of my recollection just about all of them, but I was principally concerned with the yellow.

Q What is the legend for yellow?

A Residential single family. I essentially again between this highway I-25, Pan American, I drew a line separating the bulk of the white from the dense yellow area.

In other words, I tried to demark the land area here that has been extensively developed as of the date of this map, 1963, allowing for a little bit that I was familiar with that might have been filled in up to the 1965 date.

So I essentially drew a line around this way (indicating) on down to the military facility here. Then over and picked up this area and came up here and then I kind of went out this way and then below North Albuquerque Acres.

Q The area immediately below North Albuquerque Acres between what has been designated on this map by color coding as development, the area between the development and North Albuquerque Acres, is that the Simms Property?

A I believe that is correct.

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Q Did you include the Simms property in this compilation of 42 square miles north of the I-40?

A Yes, to the extent that it lies east of I-25. If there was any portion of it to the west, I did not.

Q Is there vacant land noted on this map west of I-25?

A A substantial amount.

Q Did you include that in your figure of 42 square miles?

A I did not.

Q Did you include in the computation what has been described as North Albuquerque Acres?

A In measuring this I did not in terms of determining the 42.

Q Were there areas that were vacant in the northeast sector that you did not include in reaching the figure of 42 square miles north of I-25?

A Yes. There was quite a bit of land on scattered parcels that had been passed over and not developed inside this boundary line I had drawn.

Now, I anticipated that and the likelihood that some of North Albuquerque Acres would develop as development pressures approached this area and accumulation by realtors or just individuals joining together would result in some development.

I anticipated that might happen and development would also take place on portions of the undeveloped land inside this area such that these would roughly offset lands where I had anticipated as vacant and buildable were, in fact, not buildable, such as in the middle of a drainage ditch or on lands that had two steep a grade or had a little development on already and so I might have lost 10 or 20 acres.

Again this was a rough measure of the land availability.

Q In making the rough measure of land availability, approximately what amount of North Albuquerque Acres were you including to offset any other area where there might not be developable land?

A Oh, North Albuquerque Acres is so big, I would say 10 to 15 to 20 per cent.

MS. HYNES: You may sit down, Mr. Avellanet, thank you.

(Ms. Hynes continued to read from Government Exhibit 66 in evidence to the jury.)

Q With respect to number 2, was that the conclusion thatyou were talking about to Mr. Oberman at the meeting that you testified to?

MR. RUBINO: I object to the question.

THE COURT: Sustained.

MS. HYNES: At this time I offer Government Exhibit 985 and I will not offer the handwriting that is on that document at this time.

I will also offer 974.

(Pause.)

MR. ARKIN: Ms. Hynes, the Xerox here seems to have snipped off a piece.

MS. HYNES: The original that was produced also had that by the company. I will give you the original that you produced.

MR. ARKIN: No objection to 985.

XXX (Government Exhibit 985 received in evidence.)

THE COURT: What about 974?

MR. ARKIN: 974 is all right, your Honor.

XXX (Government Exhibit 974 received in evidence.)

MS. HYNES: We will also offer 981.

MR. ARKIN: No objection to 981.

XXX (Government Exhibit 981 received in evidence.)

THE COURT: We will have a recess.

(Recess.)

(Continued on next page.)

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MS. HYNES: Your Honor, I have just a very small portion to read of these two exhibits.

(Ms. Hynes read from Government's Exhibit 985 in evidence to the jury.)

(Ms. Hynes read from Government's Exhibit 974 in evidence to the jury.)

MS. HYNES: Your Honor, I have no further questions for this witness.

THE COURT: Mr. Arkin.

XXX

CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Avellanet, before you appeared here today, you met with Ms. Hynes, did you not?

A Yes.

Q And you met with her in her office, is that so?

A Yes.

Q On Saturday of last weekend?

A Yes.

Q In fact, Saturday night?

A Yes.

Q And Sunday, also?

A Yes.

Q And you met with her previously, too, didn't you?

A Yes.

Q When was that?

A To the best of my recollection, in August of 1976.

Q At those times you met with Ms. Hynes, you did so voluntarily, isn't that so?

A I was under subpoena.

Q Were you subpoenaed to meet at Ms. Hynes' office on Saturday night last?

A I was asked to meet with her.

Q And you did so voluntarily, didn't you?

A Yes.

Q Also on Sunday?

A Yes.

Q And you are perfectly willing to be here today, too, aren't you?

A Yes.

Q You are not here against your will?

A No.

Q When did you come to work for Harman, O'Donnell & Henninger?

A December 30, 1963.

Q And you were there for about four years?

A Not quite.

Q Three and a half years?

A In between.

Q In what capacity did you come to Harman, O'Donnell & Henninger?

A I came as an economist.

Q Out of school?

A Out of graduate school.

Q And you stayed there as an economist all during the time you were there?

A That's correct.

Q You worked under Mr. Katzenberg?

A Mr. Katzenberg, yes.

Q Rodney Katzenberg?

A Yes.

Q By the way, before I go on, you also at one time met with representatives of the defense, didn't you?

A Yes.

Q Was Mr. Katzenberg your supervisor all during the time that you were at Harman, O'Donnell?

A Yes, in a general sense.

Q What was his capacity at Harman, O'Donnell?

A He was an associate and an assistant working directly under the principals, the three principals of thefirm.

Q Was he the fellow who was overall in charge of the study, referring to Exhibit 66?

A Yes, he was.

Q And you worked for him on this study?

A Yes, I did.

Q How was it, sir, that you came to leave Harman, O'Donnell in 1967?

A I resigned.

Q Did you have certain disagreements with Mr. Katzenberg?

A I was dissatisfied.

Q Was he dissatisfied with you?

A He may have been.

Q Didn't he tell you that?

A He may have.

Q Well, do you recall what he may have told you about any dissatisfaction with you?

A Not specifically.

Q How about generally?

A Well, we had disagreements.

Q About the particular methodology which you used in doing reports?

A The particular methodology in doing reports?

Q You got my question.

A With regards to --

Q Any reports you may have done.

A Well, I'm sure that that -- I mean, he may have had some dissatisfaction on that matter.

Q Any other matters?

A I mean, not to my -- I don't know.

I know that --

Q You don't recall what he told you?

A Not specifically.

Q Or generally?

A No.

Q You recall that Harman, O'Donnell was retained in the summer of 1965 to prepare this report, isn't that so?

Then you were put on the job by Mr. Katzenberg?

A Yes.

Q You didn't havethe initial contact with the client, did you?

A I don't believe I did.

Q That was Mr. Katzenberg?

A Yes.

Q You worked on this report for what period of time?

A Well, my period of involvement stretched over from mid-September until the report was completed in May, 1966.

Q During that time, you had certain discussions with Mr. Katzenberg?

A Yes.

Q You told him what you were doing?

A Yes.

Q But you didn't work on this report fulltime from September, 1965 until May of 1966, did you?

A No, I did not.

Q You worked on other jobs?

A Yes.

Q What other jobs?

A I don't recall specifically.

Q You don't have any recollection specifically of other jobs you worked on in the same time period?

A No, I do not.

Q And you have no recollection of the particular conversations you may have had with people relating to other jobs?

A No, I do not.

Q And places you may have visited in respect to other jobs?

A No, I do not.

Q And analyses which you may have done with respect to other jobs?

A I do not.

Q Do you have any idea about how many other jobs you did work on?

A An idea would be two to four.

Q Do you know about how many hours you put in on this particular job?

A I could hazard an estimate.

Q Hazard one.

A 600, 700.

Q In the course of that nine months?

A Yes.

Q Do you recall being under any time pressure to produce a report?

A Yes.

Q Do you recall having particular deadlines set for you?

A Not particular deadlines.

Q How about a deadline without calling it any particular one?

A Yes. I would imagine I had deadlines on the memorandum that was dated November 2nd and deadlines on completing the final document in May.

Q Deadlines imposed by Mr. Katzenberg?

A Yes.

Q And in order to meet those deadlines, you had to work under considerable pressure sometimes, didn't you?

A Sure.

Q You worked all night on certain occasions?

A Sure.

Q Did you ever have Mr. Katzenberg say to you --

A Excuse me. Not all night.

Q You never worked all night?

A No.

Q How about a considerable portion of the night?

A Yes.

Q Past midnight?

A A very few.

Q Did you ever have Mr. Katzenberg suggest to you that you were procrastinating in putting this report out?

A Sure.

Q Were you?

A I may have on certain particular elements that might have bothered me and I was concerned about being as correct as I could be.

Q And that's what caused your procrastination?

A That's been a general habit pattern of mine.

Q With respect to Mr. Katzenberg, did you know that he had certain meetings with the people from Rio Rancho?

A Yes.

Q Were you not in attendance?

A Yes.

Q And he was the fellow who edited the report, I take it?

A He reviewed it and edited it.

Q As part of your preparing this report, you did a reconnaisance of the Albuquerque area, am I correct in that?

A Yes.

Q How many reconnaisances did you do?

A To the best of my knowledge, I did one in mid-September.

Q Of 1965?

A That's correct.

Q That's when you spent two or three days out there, am I correct?

A To the best of my recollection.

Q And you drove around Albuquerque?

A Sure.

Q And that's when you did your field investigation?

A Yes.

Q And that's also when you say you had certain conversations with Mr. Walsh and Mr. Sommerholder?

A Yes.

Q And also Mr. Oberman?

A Mr. Oberman I don't believe I saw until December.

Q But you spent sometime with Mr. Sommerholder and Mr. Walsh during that visit, didn't you?

A Yes.

Q About how long did you spend with Mr. Sommerholder and Mr. Walsh combined?

A Would you -- combined?

Would you clarify that question?

Q You spent a certain amount of time with Mr. Walsh, right?

A That's correct.

Q You spent a certain amount of time with Mr. Sommerholder?

A That's correct.

Q And you spent a certain amount of time with both of them together?

A That's correct.

Q Well, use simple mathematics and give me an answer.

A If I spent a day with Mr. Walsh and Mr. Sommerholder together, do you count that as two man days?

Q I will count that as one.

A You count that as one.

I would suppose that I spent ten hours.

Q During the three days you were in Albuquerque, am I correct?

A Assuming three days is correct. I don't recall my exact time.

Q Part of the time you were in Albuquerque you slept also, did you?

A Yes.

Q You didn't work all night?

A No.

Q You also had meals?

A As often as I could with people that I would hope to see.

In field work that we do, our time is at the pleasure of the people we see.

Q You can answer my questions, Mr. Avellanet. You needn't elaborate or editorialize on them.

You had your meals there, didn't you?

A Yes, I did.

Q How much time did you spend in the field aside from meals, sleeping, discussions with Sommerholder --

THE COURT: Wait, wait, wait. He said, he was trying to tell you he spent sometime with his meals talking with people. You are trying to exclude it and he wants to include it, and you said you don't want to listen to him.

Q Now, include them.

Aside from the meals you had and the sleep you had and the time you met with Walsh and Sommerholder, how much time did you spend in the field?

A In the field? That is driving around?

Q Driving around.

A The city as well as Albuquerque?

Q Yes.

A I'd say another ten hours.

Q Then you had meals with certain people you were about to say who you had to see in Albuquerque?

A I may have.

Q You said you did.

Whom are these people whom you said you had to see or whom you saw?

A Well, I can recall a few.

Mr. George Carruthers.

Q You had lunch with him?

A I may have. I don't recall.

Q You don't know whether you saw him at a meal or some other time?

A I know I visited his office one afternoon and I may have seen him again.

Q How long did you spend with Mr. Carruthers?

A That afternoon -- the balance of that afternoon possibly.

Q How long did you spend with Mr. Carruthers?

A Two to three hours.

Q Who else did you see in Albuquerque aside from Mr. Carruthers, Mr. Walsh and Mr. Sommerholder?

A I know I saw Mr. Langhoff.

Q Mr. Who?

A I believe Mr. Langhoff, who was the principal of the Sandoval School in Corrales.

Q Who else did you see?

A Oh, I believe I visited the Chamber of Commerce, industrial development group.

Q Do you recall whom you saw at the Chamber of Commerce?

A No, I do not.

Q Or at the industrial development group?

A Yes.

Q That is a group in Albuquerque?

A Yes.

Q Do you know where that was located?

A I don't recall.

Q Do you recall who you saw there?

A No, I do not.

Q Do you recall what information you received there?

A Probably industrial development brochures on --

Q But you have no specific recollection?

A No.

Q Referring to your initial meetings with the people from Rio Rancho, meaning Mr. Walsh, Mr. Sommerholder and then in December Mr. Oberman, was it not your distinct impression that these people were seriously intent on developing the community?

A Yes.

Q And they didn't come to your merely as a sales consultant, did they?

A They did not.

Q In fact, the report which is in evidence right now, which is Exhibit 66, states, does it not, that the purpose of this planning study is to assist Rio Rancho Estates in attaining maximum profitability in the development of its 55,000 acre land holdings, isn't that right?

A That's correct.

Q Were those your words?

A To the best of my recollection.

(Continued on next page.)

Q So that the report was nor merely a sales marketing device, was it?

A I would say it was not.

Q It was calculated or designed to assist by way of giving ideas in the development of this property?

A That's correct.

Q And it was aimed at how many acres of the 55,000 acres? Do you remember that?

A Well, the final report, I would say, encompassed, encompassed the land that had not been platted.

Q Do you recall how many acres overall?

A Approximately 14,000.

Q Of the 55,000?

A Yes.

Q Which the people from Rio Rancho wanted your ideas on development on, isn't that right?

A They asked specifically for the land around 528.

Q Answer my question yes or no, sir.

The people from Rio Rancho, your clients at that time, wanted your ideas and those of Mr. Katzenberg and Harman, O'Donnell firm with respect to developing 14,000 acres, isn't that right?

A They asked in terms of lands principally east of 528.

Q I am asking for a yes or no answer, sir.

MS. HYNES: Your Honor --

THE COURT: He didn't ask you what it covered, he just wanted to know what the purpose of it was.

A The purpose as stated in the contract of late August 1976 was to cover 5,000 or so acres and by either mutual agreement with Mr. Sommerholder and/or Mr. Oberman, we presented our work in a schematic basis with regard to the overall 14,000 acres.

Q You say that was by way of agreement with Mr. Sommerholder?

A Well, I would suspect informally.

Q With respect to Government Exhibit 978, which you identified a little earlier today, kindly read the first paragraph to yourself (handing).

A Just a moment.

MS. HYNES: What is the date of that, Mr. Arkin?

MR. ARKIN: It is your exhibit, November 2, 1965, Exhibit 978.

Q It is your testimony that the agreement to review 14,000 acres was kind of an informal one, is that right?

A Sure.

MR. ARKIN: If your Honor please, may I read the first sentence of Exhibit 978?

THE COURT: You may.

(Mr. Arkin read from Government Exhibit 978 in evidence to the jury)

Q It was pretty early on in Harman, O'Donnell's relationship with Rio Rancho that this informal relationship which you described came to pass; isn't that so?

A By the time span of September to May, is this what you mean?

Q Well, you were originally engaged in September.

A Yes.

Q Sometime before November 2, 1965, an understanding was reached to encompass 14,000 acress in your study, am I correct in that?

A Sure.

Q And then the study and your efforts went on until May of 1966?

A Yes.

Q And it was your idea to concentrate on land east of 528, was it not?

A I believe that in the proposal --

Q I am asking for a yes or no.

Was it your idea to concentrate on land east of 528?

A Yes, and it was also the request of the client.

Q Look, I am asking for yes or no answers.

MS. HYNES: Your Honor, if the witness cannot answer yes or no --

THE COURT: How do you know? The witness is capable of saying --

THE COURT: Pardon me, Ms. Hynes.

The witness is perfectly capable of saying he does not understand or he can't answer. He does not need preparation from you.

Q Since that time, when you did this study in November of 1965 through May of 1966, you have visited Rio Rancho?

A Yes, I have.

Q You visited it, as a matter of fact, this year, didn't you?

A Yes, I did.

Q What month was that?

A Probably May 1976.

Q How long were you in the Albuquerque area?

A At that time?

Q In May of 1966, yes.

May of 1976.

A Two or three days.

Q And you drove through Rio Rancho?

A In the dusk one evening.

Q In the dusk?

A Yes.

Q In the waning hours of day, am I right?

A Yes.

Q And you saw there the development as you could see it from the roadway?

A To the extent I traveled on the streets.

Q Were you on 528?

A Yes.

Q You drove up 528 from Coors Boulevard?

A Yes.

Q By the way, when you came from Albuquerque to Rio Rancho, did you take the I-40 interchange and go over Coors Road to 528?

A To the best of my recollection, I did.

Q I take it that what you saw at Rio Rancho now in 1976 was greater than you anticipated back in 1965 and '6, wasn't it?

A I don't know.

Could you clarify the question?

Q You had certain anticipations in 1965 and six as to the extent of development which would exist, say, in 1975 or six, didn't you?

A Yes.

Q And then this last year or, rather, this year you went out to Rio Rancho on a busman's holiday and you saw Rio Rancho?

A Yes.

MS. HYNES: I object, your Honor, to busman's holiday.

MR. ARKIN: I will withdraw it.

Q Was it a busman's holiday, Mr. Avellanet?

A It was on my own time in the dusk.

Q Do you know what a busman's holiday is?

A Not precisely.

Q If I said to you it was doing something on your own time which you ordinarily do when you are professionally occupied, would that characterize adequately what you were doing at Rio Rancho at that time?

A When I'm professionally occupied?

Q When you are professionally occupied you look at land developments and things like that, don't you?

A All right.

Q Yes.

A I'm paid for an eight hour day and this was beyond the eight hour period.

Q So you were --

A And I was on my way to dinner.

Q So you did this on your own time?

A Right.

Q Call it a land planner's holiday?

Based on what you have seen at that particular time, 1976, and what you anticipated in 1965 and six, was the development you saw at that time greater than you anticipated or lesser?

A I -- I can't answer that in terms of what I had anticipated back in 1966.

In looking at it from the vantage of 1976, when one's base point is what he remembers ten years previously, I was surprised.

Q And favorably surprised, too, weren't you?

A Yeah.

Q You have testified previously that you had any number of conversations with people from Rio Rancho in the course of preparing your report?

A Yes.

Q And that your impression was that they had a serious intention to develop this property?

A Yes.

Q And would you say it was also their intention to develop this property for as many people who would come down to that property, Rio Rancho, no matter how many that might be?

A Well, I don't know if I can answer that.

Q Do you recall having had a meeting with a representative from AMREP Corporation where you had certain discussions?

A Yes.

Q Do you recall during those discussions saying that it was your impression or understanding that the people from Rio Rancho intended to develop their property for as many people who would come down, no matter how many that might be?

A Yes, that was my understanding.

Q And you never had any feeling that these people who were your clients who engaged you would really sell out the land and walk away without developing it, did you?

MS. HYNES: Objection.

THE COURT: Overruled.

A Developing it or a portion of it?

Q Developing it as need was.

A As the needs were?

Q Needs were and came to be.

A To the extent that they had developable space to accommodate those that come, I had no concern that they would not meet the needs of the people they could accommodate in that space.

Q Were you also convinced that there were two facets to the business of AMREP and Rio Rancho, the first being sales and the second being land development, or the other way around, however you want to number them?

A I think you numbered them correctly. I would agree with that.

Q And in 1965, too, AMREP and Rio Rancho were encouraging people to build and come on down to Rio Rancho, weren't they?

A Yes.

Q That was part of their policy insofar as you knew?

A They mailed fliers to --

Q Yes or no, sir, insofar as you knew.

A Yes.

Q Part of the work you did when you prepared this report was to tour, or I should say reconnoiter, the Rio Rancho property, am I right?

A Yes.

Q You drove about the property?

A About it.

Q And you saw there certain one-half -- certain homes on one half acre lots?

A Yes, I did.

Q And you found that a portion of the one half acre lots were not cared for?

A Yes.

Q And it was your view that one half acre might be too much land for the average or ordinary person to take care of?

A Yes, it was my view.

Q And so you recommended a development or a developed portion of Rio Rancho to consist of a quarter acre lots?

A I can't be precise on quarter acre.

Q Smaller lots, then?

A Smaller lots, yes.

Q Third acre, quarter acre?

A Sure.

Q By the way, when you were in Albuquerque, do you remember reading any newspapers? I'm talking about 1965 now.

A Yes.

Q And in any of those newspapers, do you recall reading about the fast growing, in quotes, west mesa?

MS. HYNES: Objection.

THE COURT: Overruled.

A Yes, I do, with regard to --

Q I am asking you yes or no.

A Well, would you -- would you please restate that question?

Q Do you recall reading in any local newspaper while you were in Albuquerque in 1965, in September, an article, story, which described the west mesa as fast growing?

A I recall a story attributing that statement to some interest groups on the west side in pursuing the construction of the Montano Bridge over the Rio Grande River.

Q You say interest groups on the west side.

Do you know who those interest groups were?

A I do not recall.

Q You do know they were interest groups?

A I'm certain.

Q How do you define an interest group?

A Well, I would say people with businesses interested in enhancing their business or people with property interested in enhancing the value of their property.

Q Like realtors?

A Sure.

Q Land developers?

A Sure.

Q People who had other business interests on the west side?

A Sure.

Q And somehow you believe that hwen somebody who has an interest says it, it's not quite as true as somebody who has no interest in saying it, is that what you are saying or suggesting?

A No.

Q Was not a principal object of your report, Exhibit 66, to carry out a study showing Rio Rancho how to compete in the local market in Albuquerque, the local housing market?

A Yes.

Q And that local market is distinguished from national market, is it not?

A Yes.

Q You know that Rio Rancho and AMREP sell nationwide?

A Yes, I was aware of that.

Q And, indeed, most all of their sales were in states other than New Mexico?

A To my recollection, that's true.

Q And a principal part of your mission, then, was to increase interest of the local market?

Excuse me, strike that.

A principal part of your mission was to suggest means of increasing interest of the local market?

A In coming to Rio Rancho -- into the land, right.

Q And you believed that properly directed, that Rio Rancho could be successful in doing this, didn't you?

A Yes, in accordance with my recommendations.

Q If they followed your recommendations?

A Yes.

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A

Q I take it they were your recommendations and Mr. Katzenberg's combined, weren't they?

A To the best of my recollection, they were mine. I am sure that he reviewed them and may have made some modifications.

Q But essentially it is your report?

A That is correct.

Q The investigation and research is yours?

A That is correct.

Q Most of the writing is yours?

A That is correct.

Q He just kind of brushed his pen over it before sending out the final report to the client?

A I am certain that he read it very thoroughly.

Q And made a few editorial changes?

A I would suspect.

Q Did you have certain disagreements with Mr. Katzenberg about the contents of the report?

A I am sure that we had several discussions.

Q Would you characterize any of those discussions as disagreements?

A I cannot recall. Obviously if he was --

Q You just can't recall?

A If he was unhappy with it in terms that it was unacceptable and he couldnot defend it, we would have to hash that out.

Q You said before that you were a marketing co-sultant.

A Market economist. Market analyst. I study markets.

Q You study markets.

I take it that you know that since Rio Rancho has a national market and not merely a local market that the growth of Rio Rancho is not dependent merely on the local market?

A Merely on the local market, that's correct.

Q You agree with that statement?

A The growth of Rio Rancho -- yes.

Q Do you know what the exchange privilege is?

A My recollection is it pertained to residential lots and no matter where you bought a residential lot, if you were ready to settle and build a home and utilities had not reached your property, you could obtain a lot of comparable size in an area where utilities services was available.

Q In your report, which you wrote, referring to Exhibit 66, didn't you describe this exchange privilege as and I am quoting "Bringing both the land sales and the land development aspects together". I am referring to page 7 at the bottom, Ms. Hynes.

A Yes, I did.

Q And that among the benefits of this exchange privilege you noted at page 8 of the report that there were efficiencies to Rio Rancho and utility improvements and other developments costs?

A Yes.

Q By that you meant that it was a more organized and responsible manner of development, isn't that so?

A Yes.

Q And that urban sprawl is limited by using the exchange device?

A Yes.

Q And there would also be in the course of development of that community more efficiencies in the administration of government services such as police and fire protection?

A Yes.

Q And you considered the exchange mechanism as a sensible development tool, didn't you?

A Yes.

Q And you believed it to be a good idea, indeed a neat concept?

A Yes.

Q There came a point when half acre lots in the undeveloped region were exchanged into quarter acre lots or third acre lots in the developed region of Rio Rancho, are you aware of that?

A I was not.

Q Using your skills as a market analyst, let me ask you a question about that.

You said that the exchange, as you knew it, exchanging one lot into a lot of comparable value --

MS. HYNES: Objection, your Honor. That was not his testimony.

Q Comparable size, am I correct?

A Yes.

Q Now, if there were an exchange privilege where you would exchange your lot for another lot for one of comparable value, you as a market analyst, would you consider size to be the sole dispositive factor of comparable value?

MS. HYNES: Objection.

THE COURT: Sustained.

Q Do you believe that land value has more facets than size of the lot?

A Yes.

MS. HYNES: Objection.

THE COURT: Overruled.

Q It does, doesn't it?

A Yes.

Q Among those are location?

A Yes.

Q Where utilities are?

A Yes.

Q The nature of the utilities, whether they are underground or overground?

A Yes.

Q Whether there is pavement and gutters?

A Yes.

Q Now, you testified earlier today that Mr. Walsh, I believe it was Mr. Walsh, told you during a conversation you had that the growth of Albuquerque was to the eastern and northeastern quadrant or region, am I correct?

A I believe so. Could you repeat that?

Q Walsh said to you that the growth of Albuquerque, as of the time you spoke to him, had been in the eastern and northeastern portions of Albuquerque.

A For the most part, yes.

Q That is what he said to you.

Did he say any more about that, do you recall?

A He probably did. I don't recall specifically what he said.

Q At the time that he said this to you, did he tell you how much acreage there was in the eastern and northeastern development as of 1965?

A No, I don't think he told me that.

Q Do you have the impression that he knew?

A I have the impression that he did not.

Q By the way, did you say that in the period of 1950 to 1976 that Albuquerque was expanding in terms of population more rapidly than the national average?

THE COURT: You mean 1966, don't you?

That is the date of his report.

MR. ARKIN: I am asking about 1976, but I will ask it of 1966, your Honor.

A 1950 to 1966?

Q Yes.

A I could check that with some numbers, but I would believe that is true that it was growing faster.

Q At page 13 of your report you stated as your opinion, I am reading at the bottom of the page, Ms. Hynes, that --

MS. HYNES: Can you give the witness a copy of the report?

Do you have a copy of the report?

THE WITNESS: Yes, I have a copy that I can refer to.

Q Take out page 13.

A Okay.

Q At the bottom of that page you agree that the statement appears that "It is our opinion that the population growth in the west let me read the whole sentence. However as with the 830,000 population estimate for 1985, it is our opinion that the population growth in the west may reflect a certain amount of unskillful thinking at the expense of socioeconimic analytical reflection as discussed initially in this report section."

That statement was made, wasn't it?

A It was made by me.

Q That was made by you.

Would you tell me what socioeconomic analytical reflection is?

A This pertains to the trends of land use and the reasons for this as put forth earlier in the report.

Q At the time that you did this study, you reviewed certain reports by others containing population projections, didn't you?

A Yes.

Q And among the reports was one which had the 830,000 figure?

A Yes.

Q And there were reports which had other figures?

A Yes.

Q What was it about the report which had 830,000 as a projection which you found to be contrary or at the expense of socioeconomic analytical reflection?

A Well, I believed that it was high --

Q I am asking you specifically, sir, what aspects of that projection in that report were at the expense of socioeconomic analytical reflection.

A Well, as a market economist, we consider ourselves that we look at social and economic aspects to markets and that is what that hyphenated adjective would refer to.

The type of work that I did at that time and subsequently as a consultant is analysis.

Q Do you know what kind of analysis went into --

A Array the facts and then to reflect upon them.

Q You would array the facts and then reflect upon them?

A Yes.

Q It is your testimony that you believe that the person or persons or institutions that made the 830 person projection for population did not array the facts and reflect upon them?

A In the ways that would be in the best interests of my client.

Q Did you analyze the methodology utilized by the person who made the 830 person projection?

A To the extent that it was spelled out in the Wilbur Smith report.

Q Do you recall what methods were used which were different than the methods you used?

A I don't -- there may be some indication in the report. I don't recall.

Q You have no recollection.

Are you saying that Mr. Wilbur Smith didn't array the facts and reflect upon them?

A In the same manner that I did, I would say that he did not.

Q You mean in the same manner, youmean that --

A That --

Q Let me ask the question. You are a market economist. I take it you are one of several thousand in this country?

A There may be that many.

Q You say that all market analysts who analyze facts and come to conclusions in the same way that you would.

A I would not think so.

Q And that projections made by market analysts may differ from time to time, isn't that so?

A Certainly.

Q With respect to the very same projection?

A Certainly.

Q Analyst 1 can project 830,000. Analyst 2 can project 672,000. Both can be perfectly honorable competent market analysts, isn't that so?

A Provided they spell out the assumptions and the procedures that they used.

Q But they can still be perfectly honorable and competent in coming to different conclusions?

A That is true.

Q You would agree that in projecting population there are many intangible variables, are there not?

A Intangibles? Would you define intangible.

Q I will rephrase the question.

How about unknown variables?

A There are unknowns.

Q So that any population projections are apt to be influenced or affected by unknown variables, aren't they?

A Are they likely to? Well, a good projection anticipates and weighs the likelihood of different factors.

Q But it still may be influenced by those factors which are unknown?

A That's correct.

Q Those unknowns may affect the eventuality of that projection?

A Yes.

Q Indeed, are there not persons of professional skill who specialize in population projections who are not market analysts?

A Yes.

Q People who work for the Bureau of Census?

A Yes.

Q And other kinds of professions?

A In the broader definition would be demography.

Q Demographers. Market analysts don't have a monopoly on populationprojections?

A No.

Q You testified just a few minutes ago that your mode of analysis was to array the facts and then reflect upon them, am I correct?

A Yes.

Q I take it also that would be your definition of skillful thinking?

A Well, array the facts and reflect upon them, all right, and put them together and back and forth and try to make sure that they all fit or meet together.

Q You agree that one of the fundamental aspects of any kind of analysis is to array the facts?

A Yes.

Q Find out what the facts are, right?

A Yes.

Q And do a sincere and thorough investigation of the facts?

A Yes.

Q Right?

A Yes.

Q Before you make any kind of projection of conclusion?

A Yes.

Q You said that it was your belief in your report and sitting on the stand here in 1976 that there was a great deal or substantial amount of land in the northeast part of Albuquerque for expansion?

MS. HYNES: Your Honor, excuse me, that was in the report in 1966. That is not his present testimony. He was relating to the report. Not stating what his belief is today.

MR. ARKIN: If he wants to change his mind today, all right.

MS. HYNES: I am sorry, Mr. Arkin, you misstated that testimony.

THE COURT: He was testifying to what he found then.

Q Mr. Avellanet --

THE COURT: You had better move to the side so the jury can see you.

MR. ARKIN: I am going to do that.

Q You agree that 1975-A is a photo mosaic of the Albuquerque region?

MS. HYNES: As of what date, Mr. Arkin?

Q As of say 1975.

MR. ARKIN: Isn't that the date?

MS. HYNES: Yes, it is. I just want to make sure the witness knows that.

A Yes.

Q Do you think if you stepped down here you might see better what I am going to be asking you about.

It is your testimony that in 1965 and '6 you did certain studies of available land?

A Yes.

Q Around the Albuquerque area, am I correct?

A Yes.

Q And that you found an abundance of available land for development aside from the northwest, am I correct?

A I felt that there was.

Q You felt there was. Didn't you array the facts and do an analysis and determine whether there was or not?

A Yes.

Q You said that the available land was in the northeast quadrant, am I correct?

MS. HYNES: Your Honor, excuse me for objecting at this point, but there is a 1967 mosaic. Mr. Arkin is questioning this witness on 1975 and the map that the witness testified to is the '62-'63 map which he actually used in doing that analysis.

So, I think that to use the '75 mosaic at this point is misleading.

THE COURT: I don't know what the questions are so we can't determine whether they are misleading, can we?

MR. ARKIN: I will not be misleading, your Honor.

Q Are you able on this mosaic, sir, to identify the northeastern portion of Albuquerque?

A By the definition that is used in the report, in my studies in 1966?

Q Which definition was what?

A Was the northeast, I defined, as that area that is north of I-40 and east of I-25.

I-40 being this road and I-25 being this road (indicating).

Q At the time that you did your study you perceived vacant land for development in what area? Would you trace that out with the pointer?

MS. HYNES: Your Honor, I object because this is a 1975 mosaic. There is a 1967 and there is the actual map he used.

THE COURT: He is perfectly competent to do this. He is not being asked to show developed or undeveloped. Now he is being asked to show the outlines that he used.

MR. ARKIN: In 1966.

THE COURT: In 1966. The objection is overruled.

Q Here, sir.

A All right, may I use the 1963 base mark and I will trace the line.

Q I am asking you about available land as of 1966 which you referred to in your report. Use whatever lines you want and just trace it out.

MR. ARKIN: Am I in your way, your Honor?

(Witness complies.)

A You said north of I-40, right?

Q Using your definition, yes.

A The northeast.

Q Are you finished?

A Yes.

Q By the way, aside from the land in the northeast and east, did you discover any other available land in the city of Albuquerque for growth?

A Yes.

Q Where was that?

A There was land in between the river and here (indicating).

Q Referring to east of the Rio Grande?

A And west of I-25.

Q Any other land?

A Of course there is passed-over little parcels everywhere.

Q We will talk about those in a minute, but aside from those?

A There was land in the west.

Q What land in the west?

A Extensive. I did not measure the west precisely because the important determinant to me was how much land was in the east.

Q So you didn't do any analysis of the west, is that correct?

A No, that would have been sort of wasted motion.

Q You didn't think other land in the west or the west mesa available land would affect or impact the usability or development of Rio Rancho, am I correct in that?

A Well, I felt that land to the west to the extent that attracted development would enhance the development appeal or the appeal of what land Rio Rancho developed for the Albuquerque market.

Q So that you thought that land development on the west part of the Rio Grande would have a favorable impact on development in Rio Rancho, am I correct in that?

A Yes.

Q So you didn't do the kind of analysis of available land on the west side as you had done in the east side, am I correct

A That's correct.

Q But you did a probing analysis on the east side?

A That's correct.

Q You arrayed the facts and reflected upon them?

A That's correct.

Q With respect to the available land which you have just outlined on the east side of Albuquerque, do you recall what, if anything, the available land to which I am directing my pointer is called or was called in 1966?

A North Albuquerque Acres.

Q Did you ever hear of a piece of property called the Simms property?

A Yes.

Q Is the Simms property different than North Albuquerque Acres?

A Yes.

Q Where is that located?

A It is my recollection that is this area (indicating).

Q North Albuquerque Acres is above it?

A Yes.

Q With respect to North Albuquerque Acres, did your studies include any legal problems or impediments to development of North Albuquerque Acres?

A I anticipated there would be impediments in terms of the land was cut up and divided and sold to individuals which made it difficult to assemble tracts that developers found attractive.

However, I anticipated some might get developed over the years.

Q Where did you get your facts about North Albuquerque Acres?

A From the planning department.

Q Did you get certain documents in respect of North Albuquerque Acres?

A I don't recall getting documents specifically on North Albuquerque Acres. I believe North Albuquerque Acres was discussed in some of the documents that I had.

Q Do you recollect any particular discussions?

A Any particular discussions?

Q About North Albuquerque Acres.

A To the best of my recollection, I discussed land barriers with the planning department.

Q Aside from discussion with the planning department and --

A And also individuals within my firm who had previously worked in Albuquerque.

Q What kind of information did these sources give you with respect to North Albuquerque Acres?

A That the land had been subdivided and sold on I believe a spec basis in the 1920's and that it was in individual ownership and the likelihood was that this may hinder actual physical development of a substantial portion of it.

Q So that you determined in your studies that a substantial portion of North Albuquerque Acres would be hindered in development by these platting problems, am I correct?

A That's correct.

Q I take it you are also aware of certain problems with respect to the Simms property?

A Well, I am not aware of specific problems. I was not aware.

Q Did you do any study and analysis of the Simms property?

A I did not. I know that my firm has been engaged --

Q Did they do it as of 1966 or '65?

A I believe that to the best of my recollection we were involved with the Simms property.

Q You didn't --

THE COURT: Let him finish the answer.

A Prior to 1965-66 when I was working on this project.

Q You don't recall any particular facts about the Simms property?

A I would suspect there may have been some drainage that had to be worked out.

Q I am asking you what you recall.

A I do not.

Q Did your firm have a report about the Simms property?

A They may have.

Q You have no recollection of that?

A I do not.

Q You don't know whether your firm did any work in particular on the Simms property, do you?

A I recall the name being used in conversations and to the best of my recollection some persons within my organization were working on the Simms property during my tenure with the firm.

Q You don't recall them telling you about any problems of development in respect to the Simms property?

A I do not recall them.

Q You don't recall either way?

A No.

THE COURT: I think this is a good time to adjourn. See you at 10:00 Monday morning. Have a good weekend.

(Adjourned to December 13, 1976, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
George Carruthers (Resumed)		4579	4609	
Ralph Alponse Avellanet	4630	4685		

EXHIBIT INDEX

Defendant AMREP	Identification	In Evidence
EO	4601	4602

Government	Identification	In Evidence
983		4638
983-A		4640
978		4658
972		4672
66		4673
985,974,981		4684

UNITED STATES OF AMERICA

V.

76 Cr. 644

AMREP CORPORATION, et al.

December 13, 1976
10:30 a.m.

(Trial continued.)

(In open court in the absence of the jury.)

THE COURT: Yes, Mr. Arkin?

MR. ARKIN: Your Honor, my friend Mr. Fleming says this may not be the proper timing, but I suggest to your Honor this:

We have been informed that the prosecution intends to call three attorneys as witnesses immediately following Mr. Avellanet. The three attorneys are Ms. Dacey, who is with the firm of Jacobs, Persinger & Parker, and this is my friend over here, your Honor.

THE COURT: I know Ms. Dacey. She has been in this case for a long time.

MR. ARKIN: Yes. And in addition, Mr. Schreier and Mr. Waldman, who are house counsel for the corporation.

As I understand it, the prosecution wishes to call these people to elicit testimony with respect to the mode and means of the production of Exhibit 66, the Henninger report.

I have read Ms. Dacey's grant jury testimony and I have some idea -- more than just an idea -- what the prosecution is going to elicit, and I do not believe that it, one, has any probative value in the context of this case and, two, I think considering Ms. Dacey has been sitting here day in and day out working on this case, speaking for myself, I find it rather an unhappy and unseeminly thing to have her take the stand and testify as a prosecution witness considering that what she would have to say would have, in my mind, little or no probative force to it.

I think, also, that the particular showing here which the government seeks to make or will seek to make is one with the inflammatory nature, that is, a discussion of the grant jury nature and so forth, would far outweigh whatever probative value it may have.

I am concerned with a privilege question here, because all three are obliged not to answer certain questions without the privilege. The privilege was released to a certain extent. It was released to the extent that

Mr. Waldman and Mr. Schreier were custodians, but not to testify with respect to conversations they may have had with their clients.

More particularly, as I understand it, the point here is that the Henninger report, while it was certainly produced on the call of the U.S. Attorney, was not produced initially at the service of the subpoena, and there is Ms. Dacey's testimony, at least, that a lawyer in the corporation at least felt that the Henninger report fell within the subpoena. When Ms. Hynes called Ms. Dacey, the report was produced.

I understand that there will be some testimony that the report was reposing on a window sill in Mr. Solomon Friend's office in the corporat headquarters, and I take it the prosecution will seek to argue here that the fact that this report was not produced until a specific call for it shows consciousness of guilt.

I can say to your Honor I don't see how it could show that, and not showing that, I don't see how it is provative at all, and I am concerned with having these lawyers, in particular Ms. Dacey, have to take the stand for this kind of testimony.

Mr. Weidner has certain arguments which perhaps are more detailed than my own in respect to why this would not show consciousness of guilt, and perhaps your Honor ought to hear him, too, on this particular issue. But we are very concerned about it.

Also I should say the corporation never did waive any privilege, and when Ms. Dacey did go in the grand jury, I will say whatever she testified to she went of her own accord, and if any of those conversations, your Honor, falls within the privilege, and I do believe they do, most certainly the corporation, nor did any of the principals, waive this privilege.

THE COURT: Let's find out what the offer of proof is.

MR. DEVORKIN: The sequence of the offer of proof is this, your Honor:

The offer of proof certainly is consciousness of the importance of the Henninger report and it is significant in terms of the representations which the company had been made in its literature and promotional material.

But the sequences will be a little bit different and some of the facts will be a little different than Mr. Arkin stated them.

THE COURT: I am not interested in the sequence. I want to know why you want this testimony.

MR. DEVORKIN: The reason is that generally it is for the reason I just stated.

Specifically, the corporations were served on August 21, 1974 with -- and I believe the jury is already aware there was a grand jury investigation -- the corporation was served with a very lengthy subpoena covering a lot of items.

Specifically, with respect to this issue, paragraph 61 called for all documents reflecting the master plan for Rio Rancho Estates, any amendments thereto and the date of such plan or amendment.

Probably more importantly, paragraph 76 made the following request:

"All documents analyzing or reflecting in any way the present or future usability or utility of the land in the Rio Rancho for any particular purpose or purposes prepared at any time, either prior to or after the company acquired any legal or equitable interest therein, including, but not limited to, the subjects of soil quality, terrain, drainage, water supply, electricity, sewage disposal, solid waste disposal, telephone service, gas supply, and with respect to the surrounding areas, the subjects of public transportation, roads and highways, population growth, commercial development, job opportunities and unemployment."

That paragraph in particular, the first couple of sentences with respect to the present or future usability of the land, and the sentence with respect to population growth, we believe clearly called for the company to produce the Henninger report, at a minimum the Henninger report.

Mr. Waldman -- I'm sorry.

Mr. Schreier testified a number of times in sequence responding to one paragraph at a time, basically, as the company was able to gather the documents together and it was an ongoing kind of a process.

He testified in October of 1974, about two months after the issuance of the subpoena with respect to the documents that I have just mentioned.

I think I can fairly characterize it by saying the Henninger report was not produced.

Mr. Schreier's statement with respect to paragraph 76 is, "Answer. This might be in the master plan, either in the Yguado study or there is another study.

"Q The exhibit that has been marked 171-A and 171-B?

"A Right. Also it might be in the water rights exhibit," which is 154.

Then the questioning goes on to another paragraph.

There was no response conceivably referring to the Henninger report nor was the Henninger report ever produced as responsive to this paragraph.

The government, on its own, learned of the name of the Henninger report, that there was a report by that title, and concluded from its information that it must be a report that would have come in under paragraph 76, because we believed it dealt with the topics in paragraph 76.

That was late in December or early January, 1975, approximately two months after Mr. Schreier had testified in response to this subpoena on that paragraph approximately four or five months after the subpoena itself had been issued and thedocument still had never been produced voluntarily by the company.

May I have just a minute, your Honor?

(Pause.)

MR. DEVORKIN: What actually happened was that certain of the maps of the Henninger report were produced initially as part of the master plan of the company but not as any part of the Henninger report and the Henninger report was never produced as such with those maps.

When the government got on the track, so to speak, of that report, we made an explicit and specific request for that report, and it was at that time, in January of 1975 -- I think the report itself has the grand jury stamp, I think it is January 8, 1975 -- the company only, when we specifically called for that report, which should have been covered by paragraph 76, did they produce it.

I believe Mr. Waldman produced it.

That is the thrust of the government's testimony, that the company was subpoenaed under this paragraph to produce a document such as the Henninger report, that they made an effort -- they investigated what reports they had, a call went out to company officers and company employees to find documents responsive to that subpoena. The Henninger report clearly was responsive to the subpoena. It is a vital document in terms of proof in this case. The document was never produced.

When the government specifically asked for the document, then the document is produced.

We don't need anybody's testimony -- well, we need Mr. Schreier's testimony to verify that the subpoena was served, that this is what he was asked to produce, that he did make efforts and direct corporate officers, I believe Mr. Carity, to respond to these paragraphs in the subpoena and that he, Mr. Schreier, never produced that document, Government's Exhibit 66.

We don't need anybody to testify that the document was eventually produced by the company by the specific request, because we can take a stipulation on that.

However, we do think at a minimum that shows that the company and those that were informed of this specific paragraph, the jury could infer that they withheld that document because that was a vital document and showed the company's knowledge that the representations being made to customers were not true or were misleading.

May I have just one more moment, your Honor?

(Pause.)

(Continued on next page.)

MR. DEVORKIN: So we think at a minimum we should be entitled to prove the facts that I have set forth so far which shows that the company withheld a clearly relevant, highly relevant report until specifically called to produce it.

THE COURT: I gather you are not going into the whole story. You have something else you want to prove. Let's get it all on the record now.

MR. DEVORKIN: Fine.

The second part of our proof would be -- and I don't have to put Ms. Dacey on the stand for this if we can have a stipulation to it -- that Mr. Friend had a copy or this report in his possession, and that is all we want to prove in the second stage with respect to that.

Mr. Arkin made some statements about what Mr. Friend did and where he got this report and so forth and so on, but that is a matter for Mr. Friend to explain.

The Rules of Evidence clearly do not provide for a defendant to offer his own statements not on the witness stand of the truth of the matters contained in those statements.

The fact is that the report was in Mr. Friend's possession. We don't vouch for the fact for Mr. Friend's assertion that he had that report for one day or two days

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or three days or somebody else gave it to him. We certainly don't vouch for Mr. Friend's credibility on that point. He can get up on the stand and explain his possession of that report.

THE COURT: If the document had been produced by the corporation originally pursuant to the subpoena, then there would be no inquiry as to where it was?

MR. DEVORKIN: There would have been an inquiry, your Honor, because it would have been important to show what corporate officers had this document, because once you look at the document I think it is clear that there is highly pertinent information there about AMREP's many sales claims, the growth and the amount of vacant land and so forth and the direction of growth, so there would have been a probing of who had this document, who saw this document.

THE COURT: This is a 1965 report, isn't it?

MR. DEVORKIN: 1966, your Honor, right at the beginning of the time when they start using that advertising campaign.

I would also say that the document that Ms. Hynes introduced through Mr. Avellanet showing from the company who received the Harman, O'Donnell report and I

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think there is a letter from Mr. Carity to other individuals, "Please read it over, after you have read it over we will discuss it," to that effect, those documents were never produced in the grand jury, either. Those documents were produced in July of 1976, when we were told by lawyers for the company that in going through their records those documents were found -- when the lawyers were going through records the documents were found, they must have been overlooked before and they are clearly responsive to grand jury subpoenas so we are producing them now, so we never had the advantage of these internal correspondence and memos on Harman, O'Donnell & Henninger at the time the grand jury was conducting its investigation.

Certainly one highly probative area we would have gone into would have been who had this, who reviewed it.

THE COURT: It is out now.

MR. DEVORKIN: I'm sorry?

THE COURT: It is out. It is in already.

MR. DEVORKIN: It is in, yes.

But I think those are the two steps we would like to prove and we think we should be entitled to, and Mr. Friend can explain his position if we get to that point in the case.

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THE COURT: Mr. Weidner?

MR. WEIDNER: Your Honor, this matter was gone into in some detail in the grand jury back in January 1975, at which time Mr. Friend testified as to the circumstances of the Henninger study coming into his possession.

His testimony is quite clear that he never heard, seen nor read that -- never heard of, seen or read that study before October 1974, when it was given to him in the course of gathering together materials, thousands of documents, for the grand jury production.

At that point, he was given it by Mr. Carity, I believe the transcript shows, who, in turn, was assigned to gather other materials from parts of the company.

He was told by Mr. Carity it was not the master plan and was not implemented. Mr. Friend, therefore, determined that it was not called for by the paragraph of the subpoena asking for the master plan. He did not focus at that time on the other paragraph, Paragraph 76, that Mr. Devorkin has read, but put the study in his office along with hundreds of other documents where it remained until the government asked for it in January of 1975, at which time Mr. Friend directed that it be produced immediately.

I suggest that for the government to argue that a document, that because a lawyer has been given a document in the course of his duties in responding to a grand jury subpoena in 1974 connects him or is of any probative value to his participation in the scheme some years before that is, in my opinion, outrageous.

I believe it has no probative value whatsoever in the context of this case.

Furthermore, I concur with Mr. Arkin that to have testimony on this point put before this jury, who will not have an understanding of a lawyer's production and how documents come into his possession in the course of grand jury production, would be prejudicial and inflammatory.

The proof is, at best, of limited probative value, if any, and I think its prejudice far outweighs any probative value, if any, that it has.

THE COURT: If I understand, Ms. Dacey is going to testify that this document was in Mr. Friend's possession, is that right, Mr. Devorkin?

MR. DEVORKIN: That's correct, your Honor.

THE COURT: And is she going to testify as to when it came into his possession?

MR. DEVORKIN: Well, I think that would only be based on Mr. Friend's hearsay statements of when it came into his possession. I am not going to offer that.

THE COURT: He testified under oath, didn't he, before the grand jury, and you have nothing to indicate that that is not true, except some later knowledge acquired by Ms. Dacey as to how --

MR. DEVORKIN: Mr. Friend and Ms. Dacey I don't think conflict on the issue.

I don't think the government is bound by what Mr. Friend asserts in the grand jury happened. That is a hearsay --

THE COURT: No. You are saying a document is found in an attorney's possession who is charged with gathering material together for the grand jury by Ms. Dacey. She says, "Mr. Friend had it."

I gather she was working with the defendants at the time, in 1974, 1975.

MR. DEVORKIN: Yes.

THE COURT: And she says that this material, Friend has been collecting material and this document appears. You want the jury to believe that he knew it and he read it and he knew it all along.

MR. DEVORKIN: No.

THE COURT: That is what you want the jury to do, don't you?

MR. DEVORKIN: I want the jury to believe that he didn't produce it.

THE COURT: Is that all?

MR. DEVORKIN: That's correct.

THE COURT: All right.

The objection is sustained.

MR. DEVORKIN: Is that just to Mr. Friend or the company?

THE COURT: No, the total; the whole thing.

How many documents did you call for in your grand jury subpoena that you claim this did not answer?

MR. DEVORKIN: I am sorry, your Honor?

THE COURT: I suggest you mark the subpoena as an exhibit in this argument now.

Do you have the subpoena here?

MR. DEVORKIN: Yes.

THE COURT: Give it to the clerk. Mark it for identification.

MR. DEVORKIN: The only thing I would say, your Honor, is that this Paragraph 76, not the master planning paragraph, calls for the most important information possible about the company's representations.

THE COURT: I understand that, Mr. Devorkin. I want the record to show the extent of your subpoena.

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MS. HYNES: Your Honor, may we modify the offer and ask that the testimony, if it came through Ms. Dacey, would come through by a statement not mentioning Mr. Friend's name but merely that the document was not produced by the corporation to which the subpoena --

THE COURT: Obviously in sustaining the objection, I am sustaining the objection to both positions urged by Mr. Devorkin, therefore, it does not come in.

What number is this?

(Government Exhibit 1500 marked for identification)

xx

MR. DEVORKIN: Can I show your Honor Mr. Schreier's testimony on this matter?

THE COURT: No.

THE COURT: I reviewed the motion pictures on Saturday which were submitted by the government.

I gather the defendants have seen the motion pictures.

MR. FLEMING: Yes, your Honor.

d tlb

THE COURT: What is the position of the defendant?

MR. FLEMING: Our position is that the motion pictures should not be received because they are not probative since they do not show anything of any probative value with regard to what they attempt to portray, and two, what they attempt to portray we think they distort and for those two reasons we think it is inadmissible.

THE COURT: I think it is cumulative of that big exhibit on the board there.

MR. FLEMING: It is, your Honor. It doesn't show any more than that.

THE COURT: It doesn't show any more than that. The mosaic is much easier for a jury to use and handle in its deliberations. If they want to look at a motion picture, you have to show it all over again and it is fleeting.

The exhibit, which is what, 1075-A is a constant non-moving picture which you can look at and grasp all the factors that the government seeks to show and can be looked at at leisure by the jury and that is not true of a motion picture.

Lastly, I wouldn't say that the film in toto was a fair representation.

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The third reel I looked at was just vacant land. That is all I saw. There was practically no attention paid in the overall presentation to whatever the defendants had done. It looks like an awfully small amount on the picture, but you just fly over it, but the camera stays on the northwest portion of that for practically the whole third reel.

MR. FLEMING: It is flown, your Honor, at a height of 6,000 feet. It was photographed through glass. It shows no color even though the photographs in evidence show color on the property.

I can represent that I have been on the property myself and there is substantial color on the property.

THE COURT: I think the main basis for excluding it is, A, it is cumulative, and,B, it is not an easy exhibit for the jury to handle in its deliberations and adds nothing to what is already in the still photo which they have seen.

There are markings on it pointing out important things that the government wishes to have pointed out to the jury. I will sustain the objection.

MS. HYNES: I just want to be heard very briefly on that, your Honor. There are three different reels of film.

One is a reel that deals with the west side of Albuquerque. The defendants have introduced or part of the defendants promotional film is a film called Albuquerque's West Side Story which deals with the west side of Albuquerque. It deals with the close-in shots and only very specific portions of the west side of Albuquerque.

The reason why this exhibit one is not cumulative and, two, is highly relevant is that it is a film which shows a greater portion of the west side of Albuquerque including the vacant land.

There is a second reel of film where, your Honor, there is a film which deals with the undeveloped land at Rio Rancho. It is not a still shot as your Honor was saying that focuses on the northwest corner at all.

THE COURT: I am talking about the third reel, not the second reel.

MS. HYNES: I may not be numbering them in the same way. The reel that crosses the property, Rio Rancho property. The testimony by Mr. Woodward would be that it was not in place continuous shot. In other words, the plane was not hovering over and continually taking a shot.

That was a constant moving plane moving over the property.

THE COURT: I understood that.

MS. HYNES: We had in evidence at this point two promotional films produced by the company which purport to show the property. They show the developed portion of the property and they do not give the representation of the remaining part of the property.

Now, the mosaic that is already in evidence shows, you know, lines on the property which is Rio Rancho Estates. It does not show really what the nature of that property is.

Especially in light of the fact that we already have two films produced by the defendants which do show the developed portion of the property without going on to show the great expansion beyond the developed portion of the property, the character of that land, it is not cumulative, it is very different and it is highly relevant given two other promotional films by the defendants.

What I address myself to as being a third shot is the shot that comes in and goes down where there are just a few houses and that is unit 7. There has been testimony about unit 7 as of 1970,unit 7 being designated as an exchange area and that is a shot that shows what unit 7 is today and we have nothing on that -- as a matter of fact, it doesn't even come up on that mosaic because there are only four houses there so to that extent specifically the shots of the property beyond the developed portion and the shots come in over the developed portion and continue on out and that is not cumulative because it really cannot be compared to just lines that are drawn on that. The character is very different and particularly given the balancing effect of having two films in evidence which purport to show what Rio Rancho Estates is.

This film is also what Rio Rancho Estates is. We took the developed portion and continued on out to the undeveloped portion to the end of the property. I think that it is relevant to show with respect to unit 7 where unit 7 is, which does not show on that mosaicl at all.

So those are -- particularly the shots of the undeveloped portion of the property are highly relevant and really cannot be compared to a mosaic and in that sense can't be cumulative because the mosaic is just those straight lines there and you can't get the character. We have defendants' two promotional films in evidence that the jury has seen which is really limited to the developed area of the property and does not portray the remaining part of the property.

As I say, the other film is the west side and it might also add in this respect, your Honor, that the films that are in evidence produced by the defendants and used at their promotional dinners were aerial shots and they were aerial shots that were close in and had a specific purpose in mind.

Now, the government introduced that film to show what was shown at the dinners. We are introducing an additional film to show not only what the developed portion is, we agree that there is a community there and we have shown that community, and the defendants' film shows the community, but what is there in addition to the community.

We are faced with the problem, your Honor, and always have been that we are sitting here in New York with a jury that is not familiar with the terrain and is not familiar with Albuquerque. We have had witnesses' testimony as to their going out seeing the property, visiting the property, their own descriptions of the property.

This is really in our view an important piece of evidence for the jury to see so they can get an idea of what that property looks like and, again, particularly in light of the fact that we have two of the defendants' promotional films in evidence, which purport to show what Rio Rancho is. Our argument is that is a portion of Rio

Rancho and the jury is entitled to see the other portion of Rio Rancho, which is the portion that was sold naturally at dinners and that this is highly relevant. It is not cumulative because it really cannot be compared to the mosaic and the jury should be able to see it.

Particularly with unit 7 we have nothing on the mosaic with respect to unit 7.

THE COURT: That is the only thing you are pointing out that makes any difference and I don't think the existence or non-existence of four houses in relation to this case makes any difference at all.

Ms. Hynes, you have repeated yourself four times now. If you read the transcript you will find you have done it four times and I think that's all I have to listen to. You have compared the two films that the defendants have produced, which you have shown. You made mention of that four times now and I heard you. I only need it once.

That 1075-A with the oral testimony makes it perfectly clear and it is perfectly clear looking at it that it is just vacant land. You had witnesses testify, they described it as desert land.

That graphically shows in one shot and you can see as long as you want to look at it that the Rio Rancho developed area is a small portion of the huge tract of land that the defendants or the corporation bought and that is the impact that mosaic makes. It makes it very strongly and you do not need the motion picture.

MS. HYNES: Your Honor, at this time I would move to strike the Robert Vaughn film which was introduced by the defendants which was another promotional film. It was introduced by them and I think that that Robert Vaughn film at this point is cumulative and should be stricken in light of your Honor's ruling that the government cannot show the remaining part of Rio Rancho.

THE COURT: Denied.

Bring in the jury.

I would like for the record, before you bring in the jury, what is the size of that mosaic, 1075-A, Mr. Devorkin or Mr. Kaufman?

MR. DEVORKIN: I think it is about six by seven.

THE COURT: Six feet by what?

MR. DEVORKIN: I think it is approximately six feet by seven feet, something on that order.

THE COURT: All right, we will have a short recess.

(Recess.)

(Continued on next page.)

A.AM qtjb

(In open court; jury present.)

XXX RALPH ALPHONSE AVELLANET,

resumed.

THE COURT: You may continue.

MR. ARKIN: With your Honor's permission, I should like to read some excerpts from Government's Exhibit 985 and then ask a few questions with respect to that.

(Mr. Arkin read from Government's Exhibit 985 in evidence to the jury.)

CROSS EXAMINATION (CONTINUED)

BY MR. ARKIN:

Q Mr. Avellanet, in your experience as a market consultant and rendering reports to clients, you have had clients disagree with you before, haven't you?

A Sure.

Q And those disagreements have been honest disagreements, haven't they?

MS. HYNES: Do we know which disagreements we are talking about, your Honor?

MR. ARKIN: The ones he has had previously.

MS. HYNES: With whom?

THE COURT: With whom?

MR. ARKIN: Oh, I will withdraw it.

Q Going to North Albuquerque Acres, which we were discussing when we left off on Friday, Mr. Avellanet, as part of your report, you must have determined how much acreage there was in North Albuquerque Acres, didn't you?

A Exactly?

THE COURT: Well, let's take a round figure.

A Yes.

Q How many acres were in North Albuquerque Acres?

A I don't recall.

Q Was that in your report anywhere?

A I don't recall.

Q North Albuquerque Acres was included within your 42 square miles which you were talking about on the east side, weren't you?

A Not to my best recollection.

Q Do you recollect whether any portion of the Simms property or North Albuquerque Acres was included within the 42 square miles which you said were available for development upon the east side?

A You stated whether any of the Simms property or North Albuquerque Acres?

Q Yes.

A That's correct, some of that was.

Q Well, are you able to tell us how much of the

Simms acreage was included within the 42 square miles which you were talking about in your report?

A That portionof the Simms acreage that was included in the area I outlined on the aerial photograph.

Q Do you have any idea of approximately how much of the Simms acreage would have been included?

A I could estimate it, but I can't give you that figure off the top of my head. I'd have to look at it, and perhaps eyeball it.

Q This mosaic is to scale.

MR. ARKIN: Can we have a ruler, Mr. Frezzo?

THE CLERK: Yes (handing).

Q Sir, could you, utilizing this ruler --

A I have to trace the line.

If I could ask -- I'm not sure that what I traced is limited to the Simms property.

I am not sure I know exactly what the Simms property is.

Could you outline that for me before I answer your question?

Q I don't think I -- I am not a witness.

Mr. Avellanet, when you did your study of the east side, I take it that consistent with what you said your methodology was, you arrayed the facts, didn't you?

A That's correct.

Q Is there anywhere in this report which you say you prepared, Exhibit 66, where you set forth the nature of the property which you say was available for development on the east side?

A The nature of it?

Q Yes. A description of it.

A No.

Q You made a judgment or you made a projection that there were 42 square miles on the east side.

Didn't you set forth anywhere in the report what that 42 square miles consisted of?

A Of developable land.

Q Did you describe it, though?

A I said a crude estimate in accordance with certain parameters.

Q You made this crude estimate based upon what?

A Based upon the extent of development as reported by the city in its land use plan of 1963 --

Q But you didn't make an independent inquiry into the availability of this land, did you?

A I discussed it with the planning department.

Q This was with Mr. Carruthers?

A That's correct.

Q Besides discussing it with Mr. Carruthers, you discussed it with nobody else?

A I would say I discussed it, I'm sure, with persons in my office that had worked in Albuquerque and worked on the Simms land.

Q When you say you would say that, you have no independent recollection of having done that, do you?

A I am certain that I did.

Q Well now, you had certain notes from which you prepared this report, am I correct in that?

A Yes.

Q In fact, those were among notes which you provided the U.S. Attorney, are they not?

A I did not provide the U.S. Attorney.

Q Are you familiar with certain notes which had to do with this report which were in existence before the report?

A Yes.

Q Is there any place in your notes where you put down that you discussed the Simms property with somebody from your firm?

A Not that I recall seeing.

Q Well, if you were making a projection or an estimate, wouldn't your methodology be as you testified that you set forth the facts on which you base your conclusion?

A I sometimes do things in my head.

Q So that you might have had a mental note of that and not made a note any place else, is that correct?

A With regard to that --

Q With respect to the Simms property, do you have any recollectionof what kind of investigation you made of that particular property and its availability?

A I discussed it in terms of -- with people in my office to the extent, "Is that all developable and likely to be built upon?"

Q You agree that legal problems which pertained to a particular piece of land may hinder its development, don't you?

A That's correct.

Q And you indicated on Friday that there were legal problems with respect to a substantial portion of North Albuquerque Acres, isn't that so?

A Legal problems?

Q Platting problems.

A There were conglomeration problems, because it was broken up into individual ownerships.

Q Which hindered development?

A That would, right.

Q Of a substantial portion?

A Yes.

Q Are you aware of the ownership of the Simms property as of 1965 or 1966?

A I took -- I was not aware.

(Continued on next page.)

Q Did you make any inquiries of title companies or anybody else as to the state of ownership of that property?

A I did not.

Q Well, did you ever hear of a man named Simms?

A I heard of the property identified as the Simms property. I do not recall whether I heard of a Mr. Simms or Mrs. Simms or Ms. Simms.

Q Did you ever make any inquiry in any of the courthouses in the Albuquerque area as to whether or not there were any restraints upon the development of the Simms property?

A I did not.

Q If you were doing an analysis as to availability of land, wouldn't that have been an ordinary step you would have taken to determine availability?

A Well, it depends upon the conditions that I have to examine.

From the standpoint of the case here, I didn't really want to overkill it. In other words, I made several assumptions in developing these estimates of forty-two and six acres, and one was of very modest density of land use.

Q Yes. But I am asking you about inquiries you made with respect to availability of land within that forty-two square miles which you projected as being vacant or available.

A To the extent was there any significant impediment to development of the land, I'm sure that I would ask a question like that.

Q When you say significant impediment, in order for you to appraise there was a significant impediment, you have to have an array of facts, don't you?

A Yes.

Q And when you had that array of facts and you made a judgment based upon that array of facts, for somebody to appraise your judgment, don't you think you have to set forth that array of facts?

A I did.

Q Did you set forth anything about the Simms property in your report?

A I state to the extent that is included in my estimate and I attributed this to sources such as the planning department.

Q Would you be able, consistent with your prior tracing on Friday --

MS. HYNES: Excuse me, Mr. Arkin, may the witness sit down?

MR. ARKIN: Certainly.

Well, maybe not right now.

Q Could you consistent with your previous tracing on Friday of forty-two square miles, both on direct and cross examination, could you identify any portion of that forty-two square miles as being Simms property?

A A portion.

To the best of my recollection, the Simms property lies immediately south of North Albuquerque Acres.

Q North Albuquerque Acres on this particular map is where?

A I believe this would be Market (indicating).

Q Indicating North Albuquerque Acres to be north of that?

A Yes.

Q And you did not consider any of this land here within your report, am I correct, referring to North Albuquerque Acres?

A Not specifically, although I assumed some of this land would be developed and would offset portions of this land which would not be developed.

Q You never stated that as one of your assumptions in your report, did you?

A To the best of my recollection, I did not.

Q So that this unspoken assumption about North Albuquerque Acres was not meant to affect or influence the forty-two square miles which you said was available, am I correct in that?

A Yes.

Q But the Simms property was part of it? That is also accurate?

A To the best of my recollection.

Q Are you able to trace anywhere upon this mosaic that portion of the Simms property which was within your forty-two square mile estimate?

A Again, I'm not exactly certain how far the Simms property might extend this way (indicating) and how far it extends down to the south (indicating).

To the best of my recollection, it would include something in this order (indicating).

Q You never bothered, I take it, to get a meter and boundaries description of the Simms property when you were doing your particular analysis of the east side, am I correct?

A No, I was not really concerned who owned it or what have you, except to the extent was it developable and to what extent was it developed, if at all.

Q Yo were only looking at its physical constraints and barriers, am I correct in that?

A And any other barriers that would be significant with regard to rendering that land undevelopable over the span of the Rio Rancho sales program.

Q Would a legal restraint whereby the owner of a piece of land or the owners estate had that land held out of development and for the purposes of a cattle ranch, would you consider that a legal restraint of significance?

A Well, if I was so advised that it was a significant restraint; if I was advised that this was in the process of being cleared up within the next several years, I probably wouldn't consider it.

Q But you don't know what you were advised of with respect to Simms, do you?

A From the standpoint of my firm having worked on the Simms property, I'm certain that I would have been advised whether it was likely never to be developed at least over the next twenty years.

Q But, again, there is no mention of that anywhere in your notes or in the report, is there?

A I don't believe so.

Q With respect to the forty-two square miles which you outlined on Friday, are you able to, on this mosaic, indicate what portion of that forty-two square miles has been developed since 1965, this being a 1975 mosaci?

A In general, yes, I would be able.

Q Could you, utilizing this ruler, with the scale being one-half inch to a mile , indicate what portion at this point, ten years later, has been developed?

A That would take some time, depending on the level of accuracy you want.

Q I will take an approximation.

A I would have to look at the other map, because, unfortunately, we didn't trace it with tracing paper or something.

MR. KAUFMAN: Your Honor, I believe the scale is one inch equals a half mile.

MR. ARKIN: I am sorry. I had it backwards. Thank you very much.

Q I take it, though, your original analysis was pretty crude? You said crude-cut, didn't you?

A Yes.

Q I will accept a crude analysis now.

A I would have to go all around.

Q Try your best and utilize --

A It would take me a good five to ten minutes.

THE COURT: We did this on Friday, did we not?

MR. ARKIN: I did not, if your Honor please, ask him what portion of the claimed forty-two miles of developable land was developed between the ten years 1965 to 1975.

THE COURT: All right.

A Excuse me. The scale of this was what, sir?

Q One inch to one-half mile, sir.

A Okay.

(Pause)

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A I will say nine.

Q Do you have an answer for me?

A I will say nine.

Q About nine of those square miles have been developed?

A Yes.

Q That is a crude statement based upon the previous crude estimate of forty-two miles, is that correct?

A Yes.

Q You can take your seat for just a moment there.

Your report also reflects that there are certain topographical barriers or topographic barriers to the east of the city and Indian and military barriers north and south of the city, do you recollect that?

A Military barrier to the south.

Q Do you recollect the report saying there were topographic barriers to the east of the city?

A Yes.

Q That was in your report?

A Yes.

Q What other topographic barriers are there east and to the south of the city?

A That would be the mountains and the foothills coming to the point where they would be economically undevelopable.

Q Is any part of those particular barriers included within your forty-two miles that you recall?

A A portion of it it appears was.

Q What portion of what you call barriers, foothills or whatever which makes development difficult, are included within your forty-two miles?

A I would say maybe about five.

Q If you take five miles of land that is difficult to develop for physical means and you take nine miles, which you say to this point has already been developed, that leaves about --

A Twenty-eight.

Q Twenty-eight, thank you. About twenty-eight miles of land which by your estimates would still today be developable, is that correct?

A Yes.

Q Crudely estimated, very crudely cut?

A Yes.

Q This doesn't take cognizance of arroyos and that kind of thing, does it?

A No.

Q It doesn't take cognizance of legal problems in respect to certain lands?

A That's correct.

Q That is true too, isn't it?

A Correct.

Q In your report you do say, don't you, that countless variables affect population distribution. Major influences include existing patters, land availability and access improvements. That is at page 12.

A Correct.

Q By land availability I take it you also include its legal availability, don't you?

A That would be a factor, yes.

Q That would be a category, wouldn't it?

A Okay. It depends on how finely you want to cut those things up.

Q If you were to deduct from the remaining twenty-eight square miles a portion of the city property unavailable for the city legally, do you have any idea what would be left?

MS. HYNES: Objection, that assumes a set of facts not in evidence.

THE COURT: There has been testimony of non-developability of part of the Simms area.

MS. HYNES: He is just talking about the

foothills which he just eliminated in the five miles.

THE COURT: I think there was more than that.

Q Do you have any idea if you deduct the Simms property from the twenty-eight miles, square miles, what you would have left?

A All of the Simms property?

Q Yes.

A Again, could you give me an idea of how far the Simms property comes down and how far it extends. I do not know the boundaries of the Simms property so I can't answer that.

MS. HYNES: Your Honor, is Mr. Arkin asking this witness that all of the Simms property has legal problems which have to be eliminated from his calculation?

THE COURT: No, he is asking him how much has to be.

MS. HYNES: The last question was if you eliminated all of the Simms property.

THE COURT: No, all of the parts that were tied up with limitations.

MS. HYNES: This witness has testified that it was not --

THE COURT: We passed that. This witness said he doesn't know the boundaries.

MS. HYNES: My objection is not the boundaries.

THE COURT: We have passed that. The question has cut off the questions about it by making a statement that he doesn't know the boundaries.

MR. ARKIN: Okay.

Q In your report you recognize, Mr. Avellanet, that at least one projectionist or agency had said that population by 1985 would be about 825 persons, do you recall that?

A They used that as their assumption for the transportation forecast.

Q In your report also you describe a modest density as being somewhere in the neighborhood of three dwelling units per acre with 3.6 persons per dwelling unit.

A Yes.

Q That is based upon less than a half an acre for a dwelling unit, am I correct in that?

A Yes.

Q Does that also embrace single family homes -- does it solely embrace single family homes, that projection of density?

A Does that solely embrace? That is an average density.

Q So that would include some multi units?

A Yes.

Q If you were to take your estimate of, say, ten persons per acre -- do you know what the average density has historically been in Albuquerque from 1960 to 1965 or six when you did this report, what was the historical average density for Albuquerque?

A I would suppose it was somewhere around 3.0 at the time.

Q Per acre?

A Yes.

Q Did you recollect going into that as part of your study?

A Only that to my recollection I anticipated future development being denser so that less land would be consumed, but then, well, just to make my estimate as conservative as possible, let's just use 3.0 as the number.

MS. HYNES: Dwelling units, your Honor, or people per acre?

THE WITNESS: Dwelling units.

MS. HYNES: Mr. Arkin, can we have the question --

THE COURT: Wait a second, Ms. Hynes. Mr.

Arkin is asking questions.

MR. ARKIN: I will try to clear it up.

Q Mr. Avellanet, when you said that you thought that the density historically between '60 and '65 was three per acre, did you mean three persons or three units per acre?

A Three units.

Q And approximately 10 persons per acre, is that your testimony?

A Yes.

Q Do you recollect having done any research to determine that?

A Yes, from the standpoint of reading the Wilbur Smith document and reading the city's planning report, the land use plan.

Q As a market analyst, one of the most important things that you people look at is population projections, isn't that so?

A Yes.

Q So it would have been very important from your point of view back in 1965 and '6 to delve into the population, population projections and density projections, isn't that so?

A If I was doing a population and residential study for the city of Albuquerque, perhaps, but in this case I did not deem it, you know, that important, if you will.

Q There is no place in your report where you set forth the historical density per acre per person -- rather per person per acre in Albuquerque.

A That is correct. Rio Rancho was concerned with the future and not with the past.

Q Don't you gauge the future in your profession, don't you gauge the future at least in part based upon what has happened in the past?

A Yes.

Q In order to make a projection, then, and have somebody determine whether or not it is a skill or unskillful projection, wouldn't you array the facts on which you based your assumptions?

A Depending upon what the use is to be of the report, that is correct. Some people do not want to be bothered with that.

Q How many pages was your overall report, do you remember that?

A Fifty-one.

Q Fifty-one pages single spaced typing per page?

A Yes.

Q How long in your report would it have taken you to set forth historical densities?

MS. HYNES: Objection.

THE COURT: Sustained.

Q If I were to say to you that historically the density of Albuquerque were five persons per acre --

MS. HYNES: Are we talking about gross acreage now, your Honor?

THE COURT: I gather everything is gross unless otherwise indicated.

MR. ARKIN: It is indeed, your Honor.

Q If I were to say to you in your role as a market analyst that the historical density of gross acreage was five persons per acre and that the population projected for 1985 was 825,000 persons, based upon the population which you knew about or which you discerned in 1965 and upon the available land in the northeast, would that forty-two square miles have been sufficient to suit all of the additional population by the year 1985?

MS. HYNES: Your Honor, objection, because the question is misleading. The way Mr. Arkin characterizes it, he starts off with 825 and then he says based upon the population you found. This witness did not find that in the next twenty years it would be 825.

MR. ARKIN: I will reframe the question. It may have been misleading. It may have been inarticulate, but not misleading.

Q If we take the projection of 825,000 by 1985 and you subtract from that the population which existed in 1965, you would have a certain number of people, is that correct?

A Correct.

Q What was the population in 1965?

A 260.

Q If you take 260 from 825, what does that leave you?

A 565.

Q 565,000 and if you take historical density, persons per gross acreage, and you take the 565,000 persons, how many gross acres would you need to satisfy all of those people?

A You divide 565 by 5, which would put you up at 110,000.

Q 110,000 acres.

How many acres are there per square mile?

A 640.

Q You divide 640 into 110,000, what do you end up with?

A Shall I really answer that?

THE COURT: Yes, he wants an answer.

A You said 640 by 110,000.

THE COURT: Do you want a pencil?

MR. ARKIN: Would you like to use a calculator?

A I think you asked me something incorrect. I don't think you meant what you said, Mr. Arkin.

Q If I didn't, please help me.

A You really wanted me to divide 110,000 by 640.

Q Yes. Would this help you?

A No. I will just use a pencil. 170 square miles --

Q About 170 square miles. Follow me, if you will, and I will take it in small questions.

If you deduct from your 42 square miles 5 which was in the foothills, you end up with 37 square miles, is that right?

A Yes.

Q If you deduct from the 37 square miles the 8 or 9 which had been developed in the even years intervening between 1965 and 1975, you have 28?

A Right.

Q And if you deduct from the 28 -- let's not even deduct the 28. That leaves you somewhere in the neighborhood of 145 square miles you need to include the projected population for 1985, the high projected population of 825,000, am I correct?

MS. HYNES: Objection.

A Under your assumptions.

Q On my assumptions, yes. Those assumptions you would agree are not mine byt are made by Wilbur Smith & Associates?

A He made an assumption of five persons per acre.

Q The 825,000?

A Yes.

MS.HYNES: That is the question. Mr. Arkin has not included the assumption of Mr. Wilbur Smith was of five persons per acre and that is what is making this question misleading.

THE COURT: I don't think the witness is having any trouble. Overruled.

Q Wilbur Smith did project 825,000 population, we have agreed upon that, haven't we?

A To my recollection.

Q The population projection -- excuse me, the density, historical density, did you discuss that at all with Mr. Carruthers?

A I don't recall precisely that I did.

Q When you were in Albuquerque you spoke you say to a number of pepole and you said the principal of Corrales high school. Did you talk about that kind of thing with him?

A No, this was the principal of Sandoval School, which is an elementary school in Corrales.

Q Did you discuss that kind of thing with him, densities?

A The density, no.

Q Was there anybody else in Albuquerque with whom you discussed population projections or densities?

A In a very general sense, what's the outlook for apartments. I know that these are a lot denser than traditional single-family homes.

Q You didn't talk to anybody about what the historical density had been aside from Mr. Carruthers?

A No, I did not. I was given source documents that had information and some that I found useful in seeking to get a picture of what it was in 1965 and what it would be or might be in the future.

Q If I were to say to you that Mr. Carruthers has testified that the historical density, that is gross acreage per person per acre was around five, would you disagree with that?

A I would like to have some clarification and then I would like to know, you said historical density. Does that mean density in 1963 --

THE COURT: He means the density, 1962, 1970 and 1975 were all testified to by Mr. Carruthers to be about five persons per acre. That is what he means by historical density.

THE WITNESS: I see.

Can you describe the land? Are you talking about within the city limits or within Bernalillo County and what land are you including or not including?

Q Did you ask Mr. Carruthers those questions when you saw him in 1965 or '6?

A To clarify the exhibits that I worked with, I am sure that I would have called him up if I had any question.

Q Would you have made a note of what he said to you somewhere in your notes or somewhere in the report?

A To the best of my knowledge, I didn't put anything in the report and I may have scribbled it on something that probably gets thrown in the trash after you finish with the job.

Q Don't you agree when you render a conclusion in a report such as you did that for somebody subsequently to appraise it in terms of its accuracy or its competency that properly the assumptions and the basic factual data should be set forth?

A Yes.

Q But you didn't do that here, did you?

A I really wasn't writing an academic treatise. I set forth what I thought was sufficient support for the point and the conculsions that I reached.

Q You say that there were about 42 square miles of used land north of the Corronado Freeway and state in effect that this land is available for development.

Is there any place in the report where you set forth any data or facts to support that conclusion?

A As I recall, I state this in a paragraph somewhere in the beginning of the report.

Q My question is really --

A Based upon land use plan?

Q My question calls for a yes or no answer.

MS. HYNES: Can you refer the witness to the page that you are referring to in the report, Mr. Arkin?

MR. ARKIN: I am referring to page 13.

A I think it can be interpreted from that paragraph that Harman, O'Donnell & Henninger measure off this land use map an area that was developable and undeveloped in accordance with certain barriers.

Q Would you read to me what you say justifies your conclusion in this report?

A I can read the two sentences where it is discussed. As crudely measured from the 1962 land use map, Albuquerque transportation study (Wilbur Smith & Company) the topographic barriers east of the city and the Indian and military barriers north and south of the city, land availability for urban development east of the Pan American Freeway (I-25) approximates 48 square miles.

Q That is what you say justifies the conculsion which you render in your report that there are 48 square miles available for development?

A Yes.

Q Didn't you on Friday criticize the Wilbur Smith report for not setting forth what you say the array of facts on which it based its projection of 825,000 population by 1985?

A I questioned its use of the 825,000 population projection. It used as its source the city studies, as I recall, done by Brasher and he presented three ranges and they picked for the Wilbur Smith studies the high range.

Q But your criticism of that report technically from your point of view as a professional was that it didn't set forth the array of facts on which he based his conclusion, isn't that so?

A I don't recall and we could check the wording how I dismissed the Wilbur Smith forecase of 825,000.

Q Tell me, Mr. Avellanet, would you agree that taking, one, Wilbur Smith's population projection for 1985 and taking, two, Mr. Carruthers' testimony as to the average density of persons per gross acre in the Albuquerque area, that the 42 square miles you speak of would not be nearly enough to satisfy the needs of the projected population increase by 1985?

A I said I can't answer that until you tell me what acreage is in that five persons per acre. Does he have Sandia Mountain in there? What land is he talking about?

Q Didn't you read that report?

A I certainly did in 1965.

Q You knew you were coming to testify here for some period of time, didn't you?

A I admit I took a copy of this report when I left Harman, O'Donnell & Henninger, but I certainly didn't take the Albuquerque file.

Q But you knew you were going to testify here for several months, didn't you?

A Yes.

Q And you met with Ms. Hynes on several occasions?

A Yes.

Q You knew the subject matter on which you would be interrogated?

A I suspected there might be some areas.

Q Which you would be questioned about?

A Yes.

Q Did you take pains to refresh your recollection as to what you actually did in 1965 and '66 to prepare yourself?

A I sought to refresh myself.

Q You didn't read any of the source materials on which you based your report?

A I skimmed it.

Q When you skimmed that particular report, the 1985 land use plan, didn't you determine from that what area was covered?

A Not to my recollection.

Q Do you recollect the Wilbur Smith report?

A Yes.

Q That particular report projected a fairly substantial development on the west side, didn't it?

A They anticipated that for their planning purposes.

Q But they anticipated it, though, didn't they?

A They did.

Q Also that the northeast would fill up to capacity?

A I believe something to that effect, they stated that.

Q Would you also agree that in 1965 and 1966 when you were doing this particular report that there were experts who anticipated that the growth would be to the west?

A I did not encounter any.

Q What about realtors or builders?

A After talking with several people, I was satisfied with regards to my conclusions and their basis that I did not consider their opinions to be as expert as mine.

Q I take it some of the people you spoke to were people who had lived and worked in the Albuquerque area for many years?

A Yes.

Q Do you remember who any of those people were?

A One might have been Mr. Walsh. The others I can't recall, but again this is not uncommon from the standpoint of, you know, I am hired to look at the big picture, the overall, whereas people living in the town may not think about this perspective in going forth in their daily lives. It's not surprising, you know.

Q You spent overall three days in Albuquerque, though, am I correct?

A Sure.

Q Of that three days you spent only a portion of it in analyzing the northeast as available for development?

A Sure.

Q Your report has a couple of paragraphs in it relating to the northeast, is that right?

A Yes.

Q No where in the report does it set forth the assumptions on which you base your expert appraisal?

A Well, my appraisal is based upon the amount of developable land that is crudely estimated and the trends, the historical trends and the outlook for the future as best I could determine.

Q Trends are something which are a matter of opinion, aren't they?

A I have trouble with that question.

Q Would you say that trends are a matter of judgment, then?

A Trends may be a matter of fact. Trends are a matter of fact with regards to what has progressed in the past.

Q When you project a trend into the future, aren't there certain variables in that projection?

A There certainly are.

Q If one of those variables turns out to be the one not assumed, then the trend may turn out to be different than projected, is that right?

A That's right.

Q So that trends are based upon assumptions?

A Yes, trends in terms of projection.

Q Yes, are based upon assumptions?

A Yes.

Q That is future trends?

A Yes.

Q If we call a future trend a projection, is that better?

A We are getting into real semantics. I think the Census Bureau treats projections as mechanical calculations and forecasts, the likelihood of certain things taking place.

(Continued on next page.)

Q Okay.

So future trend would be a forecast?

A Yes.

Q Forecasts are matters of judgment; it's a question?

A Okay, yes.

Q You will agree with that.

What was the CBD study? Do you remember that?

A That was the Central Business District study that was undertaken since 1962 in Albuquerque, to my recollection.

Q You read that report?

A To my recollection, I did.

Q Do you recall anywhere in that report it saying that the 1985 -- that by 1985 development must come to the west to handle the overflow?

MS. HYNES: Objection. It is not in evidence.

THE COURT: Do you want to mark it, Mr. Arkin?

MR. ARKIN: I have it in my notes.

This is an exhibit of notes we received from the prosecution.

xx (Defendant Howard Friedman and Henry Hoffman Exhibit EP marked for identification) gtjw 2 Avellanet - cross

Q Perhaps this can help you with your recollection, sir (handing).

A Okay.

Q Do you recognize this as your notes, Mr. Avellanet?

A Yes.

Q I am referring to 00027.

Does this particular page of your notes, referring to EP, refer to notes you made on the CBD Study?

A It may be.

MS. HYNES: Can you just wait a moment, Mr. Arkin, until I get that page.

(Pause)

Can you tell me what the 3500 number is at the top?

MR. ARKIN: If it's there, sure.

It is 3543BBB.

Q Were these notes which you made based upon the CBD Study on this page?

A The first two lines, the first two items.

Q Referring you to just below the middle of the page EP for identification, can you tell me the source of these two statements?

A The transportation study, Wilbur Smith.

Q Both of them?

A This statement (indicating).

Q This one (indicating)?

A Yes.

Q And this one? Was that also from the transportation study?

A I'd have to check it.

I tend to read things and I tend to think about it and maybe I'm exploring some hypothesis of my own. It might be in there.

Q In terms of you exploring hypotheses, do you agree that your notes contain the statement --

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

Q "By 1985, development to the west must come to handle overflow"?

MS. HYNES: Your Honor, this is not in evidence.

THE COURT: Overruled.

A Do I recall in my notes that statement?

Q Yes.

A Yes.

Q Do you recall the source of that statement?

A To the best of my recollection, that may have been the transportation study, the Wilbur Smith study with the 825,000 people.

Q And in your preparation of this report, did you also have made to you the statement which you noted that industry bridges, amenities, land values, et cetera could pull growth to the west?

MS. HYNES: Objection.

THE COURT: Overruled.

A Yes,that statement was written on that page.

Q Well, do you recollect where you got it from?

A It may have been from the Wilbur Smith; I'm copying down the argument presented there or just fix for their assumption that they would need to build a substantial amount of transportation improvements on the west side.

Q Were either of those two statements included in your final report?

A I do not believe they were.

Q You rejected them?

A Yes.

Q Did you set forth anywhere in your report why you rejected them?

A In several pages. I built my argument in support of my conclusions that the growth would be basically to the east.

Q You say on several pages.

A Yes, throughout.

THE COURT: The witness is saying that by his setting forth his conclusions he rejected the Wilbur Smith projections.

MR. ARKIN: All right.

Q Your report, the one which you did, projected that it would take a certain period of time to sell out the 55,000 acre tract of Rio Rancho which then existed, didn't it?

A Yes.

Q Do you recollect what your estimate was in terms of time to sell out the tract?

A Seventeen, eighteen, nineteen years.

Q Did you have any idea what the rate of sale of land was in fact from 1965 up to, say, 1974?

A I do not.

Q Do you know that it was --

MS. HYNES: Objection.

THE COURT: He said, "Do you know". What are you objecting to?

MS. HYNES: Because he is going to start to read some figures. First of all --

THE COURT: I don't know what it is. First let us find out what he is going to do. But there is no objection to a sentence starting, "Do you know".

Q Do you know that the rate of sale of the land at Rio Rancho in that ten year period was about double what you projected it to be?

A I did not.

Q That does not make you feel, however, that your projection was a dishonest projection?

A As I recall, it was not my projection.

Q Isn't it one that you accepted?

A I accepted it. It was given to me by the client.

Q You accepted it because it was historically accurate, is that why?

A It was agreed upon as a, "Let's use that. We all know that there are a number of factors in the wind that could influence it and we had to remain reasonably flexible," so we used 2,000, 1,750 or somewhere in between there as an average sales that Rio Rancho who achieve and that would be used for planning purposes.

Q Do you know what leapfrogging is?

A In a land use sense?

Q Yes.

A Yes.

Q What is it?

A Well, this is where you have -- you develop land in one portion and then you leap over some land that you may very well have developed and have another development.

Q As a market analyst, are you able to say whether or not this is a common phenomenon of the growth of cities?

A It's a common phenomenon.

Q Did you build that common phenomenon into your estimates or projections in your drafting of the Harman, O'Donnell & Henninger report?

A In regards to what?

Q In regard to the availability and use of particular land and direction of growth of the city.

A Yes.

Q That is expressed in your report?

A No, but the land is developed -- if there is, for instance, forty-two square miles in the northeast quadrant and you develop a piece here and then you go three miles in one direction and put a subdivision down still remaining within that forty-two square miles, it really wasn't of concern to me wit regard to the question of how much development the northeast could hold.

Q But were you not, in making and drafting your report, concerned with the trend of growth of Albuquerque?

A I was only concerned from the standpoint of it was -- wasn't helpful to my client in terms of the market prospects for the morthwest.

Q To be helpful to your clients, which at that time was Rio Rancho --

A Yes.

Q Wouldn't you have wanted to inform your client of the leapfrogging phenomenon and how that might affect the trend of growth of Albuquerque?

A I didn't see that as of significant.

Q Do you recall ever having made the assumption, stated assumption, in respect to Rio Rancho that that area is on the periphery of Albuquerque and heavy penetration is unlikely for five to ten years?

A I think I -- yes, I recall a statement to that --

Q That's your statement.

A Sure.

THE COURT: He says he recalls it.

MR. ARKIN: Yes.

Q And at that time, when you were talking about penetration,you were talking about local market penetration, were you not?

A Right, yes.

Q And so implicit in your assumption is that after five or ten years, speaking from the point of 1965, that there might well be heavy penetration, am I correct in that?

A Well, I said or longer, it seems to me, and I also stated fifteen, twenty years or a larger period.

Q But you did state five to ten years?

A Well, if you could show that to me, it would be refreshed.

I don't recall using the word five. Maybe I did.

MR. ARKIN: Would you please mark -- I don't have the 3500 number.

The number is 700-101.

(Defendants Howard Friedman and Henry Hoffman Exhibit EQ marked for identification)

Q I show you EQ (handing).

Are these your notes, Mr. Avellanet?

A Yes.

Q And I direct your attention to the top portion of EQ.

A Yes.

I thought your -- I thought your question before pertained to a statement that I made to the client.

Q I am sorry. This is a statement you made, period.

A I wrote down some words on some scrap paper.

Q Did the words which you wrote down on the scrap paper have any meaning to you when you wrote them?

A Yes.

Q And you said on that piece of scrap paper, didn't you, that the area is on the periphery of Albuquerque and heavy penetration is unlikely for five to ten years, isn't that correct, too?

A Yes.

Q When you wrote that, first you were speaking about local market penetration?

A Yes.

Q As distinguished from the national market penetration?

A Yes, yes.

Q And you were speaking about a time period of five to ten years?

A At that time, right.

Q Isn't it fair to say that implicit in what you said is a fair inference that heavy penetration might be expected after five or ten years?

A That -- those notes were made in the process of the development of my recommendations and the writing of this report.

What I believe happened following whenever I wrote those is that I got --

Q Excuse me, Mr. Avellanet. I am asking for a yes or no answer.

THE COURT: No, he can't answer that yes or no.

A I got more positive in feeling better and solider in regard to my conclusions and didn't use the word "five" at all in the final report.

I believe the word ten is used in the context of ten or longer.

Q Do you recall testifying on direct examination last Friday about the figure of five percent of persons who buy land can be expected to utilize it and 95 percent not?

A Yes.

Q And you say you got that figure in discussions with Mr. Oberman?

A Yes.

Q That five percent is a figure you disagreed with, isn't it?

A I didn't disagree. At the same time I was concerned what if more came.

Q Referring to page 9 of your report, doesn't that state that through the years ahead, an increasing number of buyers of residential lots will become interested in moving to their homesites?

A There are factors that suggest that might happen.

Q The report says that, doesn't it?

A Where?

Q At the top of the page, page 9, the second line.

A Yes. I am talking about the industry, and I don't believe at that point in the report I have mentioned five percent. I don't believe I have made anything.

Q I am not asking you whether you mentioned five percent, I am asking whether that statement appears in your report which you wrote.

A A statement -- a sentence including the phrase that you mentioned is in the report, yes.

Q And you underlined it?

A Yes.

Q That portion that I just recited?

A Yes.

Q Underlining means to you it is important, doesn't it?

A Yes.

Q Do you also recollect in your report setting forth a number of reasons why you think the 5 percent/95 percent figures are not going to hold true for Rio Rancho?

A That they may not hold true, yes.

Q They may not hold true?

A Yes.

Q Do you recall where that is in your report?

A Somewhere near the back.

Q Look at page 34.

A Yes.

Q In that report, don't you set forth as a reason why the five percent number may not hold true is that the growing trends of mobility and affluence can be expected to result in greater numbers of people moving to warmer climates and newer environments upon retirement from work?

A Yes.

Q And most of the land sales experience is still young in years?

A Yes.

MS. HYNES: Existing.

Are you quoting from that?

MR. ARKIN: Parts of it, Ms. Hynes.

MS. HYNES: It does not say "experience," it says "existence".

MR. ARKIN: Excuse me.

Q That is in there, too, existence, right?

A Yes.

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Q And given Rio Rancho Estates' projected land sell-out, plus its urban location, it does not seem unreasonable to expect high percentage of land buyers becoming home owners in the distant future?

A Yes.

Q Those are all reasons why you thought the 5 per cent figure might not be an accurate projection?

A Yes.

Q Also you poisted the situation that should Albuquerque suddenly have explosive growth in the '50's -- page 30 -- do you recall that in your report?

A Yes, pursuant to high school needs.

Q That would be another factor if Albuquerque resumed its explosive growth of the '50's which might very well change any 5 per cent-95 per cent figure, am I right?

A That wouldn't necessarily be related. The 5 to 95 per cent pertains to the national market whereas I am sure that this high school is in the context of the local market.

Q Do you recall in your report discussing the land value?

A Yes.

Q Do you recall setting forth in your report certain transactions, land transactions which you said could give some insight as to the value of land at Rio Rancho?

A Yes.

Q Those particular transactions were listed on page 16 and 17 of your report?

A I could check that.

Q Check it and see.

(Pause.)

A Yes.

Q Those particular transactions which you picked out and which you reported to the client were for parcels of land in what part of the overall Albuquerque area, what location?

A Well, I see by what is in the report there were a number throughout the Albuquerque area.

These were --

Q Answer where through the area.

A Northeast, southwest, southeast, north, Corrales, College Heights, which is immediately west.

Q These were all transactions which you obtained during your field investigation?

A To the best of my recollection, they were estimates of the current prices for typical lots at various locations given to me by persons I encountered during the three days I was there.

Q In setting forth these examples in your report, you had no intention of misleading your clients, did you?

A Certainly not.

Q What you wanted to do, as you said, give them insight as to land value, isn't that right?

A Sure.

Q Land value at Rio Rancho is what they were concerned about, isn't that right?

A This was information with regards to valuing what we might get out of the land that we might sell to the local market.

Q These examples which you set forth were meant to give them insight as to what you might value those parcels at?

A In terms of understanding what I valued the proposed developments at.

Q You didn't feel it to be dishonest to take examples for land price which were in other parts of Albuquerque and suggest those to your client as transactions or land estimates that the client might look at?

A Might look at --

Q And consider setting a price, is that right?

A Yes.

Q With respect to the setting of a price for a parcel of land, such as is sold by AMREP and Rio Rancho, do you agree as a market analyst that it is legitimate to factor into that sales price the cost of selling?

A If you can get away with it.

MS. HYNES: Your Honor, I have an objection to the question.

THE COURT: What?

MS. HYNES: I have an objection to the question.

THE COURT: The question has been asked and the answer has been given. The objectionis overruled.

Q To put it in more common parlance, at the cost of making land famous or well known is a legitimate factor to pass along to a land buyer?

MS. HYNES: Objection.

THE COURT: Overruled.

MS. HYNES: I object to the phrase famous and well known, your Honor?

THE COURT: They advertised.

THE WITNESS: Could you repeat that?

THE COURT: The cost of advertising?

THE WITNESS: Yes, the cost of doing business.

Q Also the advertising enhances the value of land in many cases, doesn't it?

A Sure. At the point of advertising.

Q Referring to page 9 of your report, and I am referring now to the fifth sentence from the top, quoting:

"And in Rio Rancho Estates' case because of its location within the greater Albuquerque area, changes are occurring in demands for urban land which affect the values of land within the metropolitan area."

That appears in your report, doesn't it?

A Yes.

Q By that didn't you mean that demands for the land were going up in the Albuquerque area?

A Not necessarily.

Q Do you know whether land was going up in the Albuquerque area in value because of the demand?

A I don't recall at that time because it seems to me --

Q Wouldn't you as a market analyst wanted to have found out about that, yes or no?

A Yes.

Q Did you find out about it?

A To the need that would affect my conclusions.

Q Was there any place in the report or in your notes where that particular inquiry is noted?

A Whether land values are going up or down?

Q Yes.

A I don't recall. There may be.

Q Do you recall anything particularly about that?

A I would imagine that land values had gone up in the Albuquerque area over, you know, ten years past. They pretty much had everywhere, inflation.

Q Would you consider Rio Rancho to be within the greater Albuquerque area?

A Certainly its development area I would. Going 15 miles out and 5 miles north, you know, suit yourself.

Q Do you know what the SMMS is?

A At that time it was Bernalillo County.

Q Do you know whether it has been changed or modified to include southern Sandoval County?

A Yes.

Q And therefore all of Rio Rancho?

A Yes. This doesn't necessarily mean that all land --

Q I am asking you a question, sir.

A -- is met.

THE COURT: Wait a second.

THE WITNESS: Just because --

THE COURT: Wait a second. Just answer his questions.

Q I take it as a market analyst you would agree that when you have demands for urban land which increase in an urban area that that has some impact usually upon other land around it in terms of land value?

A Usually.

Q Land values go up in say one area, land values are apt to go up in the area right next to it?

A Yes.

Q So that if land values were going up in the Albuquerque city area, that that might well have an impact upon land values in Rio Rancho, which is near Albuquerque?

A Portions of it, yes.

Q This one last question, sir, which is: Do you agree that -- as a market analyst again dealing with people buying and selling -- that one of the more substantial inducements to the ownership of land or the purpose of land is the pride of ownership, the mere ownership itself?

MS. HYNES: Objection.

THE COURT: Sustained.

MR. ARKIN: I have nothing more.

THE COURT: We will adjourn for lunch. Return at 2:00.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(In open court in the absence of the jury.)

MS. CROSS: I had one application which I will make while we are waiting for Mr. Arisohn to get back in, and that is in reference to --

MR. ARKIN: Are we waiting for Ms. Hynes?

MS. CROSS: No.

THE COURT: You are prepared to proceed, aren't you, Mr. Devorkin?

MR. DEVORKIN: On these applications I think we are, your Honor.

MS. CROSS: In reference to the witness Samuel Kaufman, the indictment alleges a letter that was sent on the 28th of April, 1975, from Rio Rancho to Mr. Kaufman.

Mr. Kaufman had paid in full for his land on April 4, 1972. He was issued a warranty deed.

There are two letters that we can find. The letter that is dated April 28, 1975 is, in fact, a letter from Mr. Kaufman to Rio Rancho, and on May 9th there is a letter from Rio Rancho to Mr. Kaufman.

But in neither event, considering either one of those letters, can we see this mailing as being part and parcel of any alleged scheme to defraud inasmuch as he had paid in full for his land in April of 1972 and he was issued a warranty deed.

Rather than get into the situation that we got into with Mr. Gusowsky, after three-quarters of his testimony, there was a question of amending the indictment or calling another witness, we would suggest at this time if the government truly wants to make a count, that they should call another witness rather than Mr. Kaufman.

THE COURT: Mr. Devorkin?

MR. KAUFMAN: Your Honor, I don't think Mr. Kaufman is the witness of either myself or Mr. Devorkin. I hadn't been aware that they were going to raise this issue now.

Mr. Kaley has been talking with Samuel Kaufman.

I am aware there is a problem that the indictment, I believe, transposed Rio Rancho and Mr. Kaufman with respect to who was the sender and who was the addressee, and this was a problem that we were going to bring up before Mr. Kaufman was called to testify the same way with respect to the same type of problem we faced with Mr. Gusowsky, how the defendants wanted us to proceed on that.

THE COURT: What count is Kaufman?

MR. KAUFMAN: I am looking for it now, your Honor.

MS. CROSS: 36, I believe.

THE COURT: You say it should be a letter from Kaufman to Rio Rancho?

MR. KAUFMAN: I think that is the April 28th letter, your Honor, and I believe there is a February 9th letter.

THE COURT: What about this point that it couldn't have been within the scheme since he paid for it and it was all over?

MR. KAUFMAN: Your Honor, I am not sure what the letter says so I am in a particular disadvantage.

THE COURT: Take a look at it.

MS. CROSS: I have a copy of the April 28th letter which Mr. Kaufman sent and the May 9th letter, which is in response (handing).

(Pause.)

MR. KAUFMAN: Your Honor, at this point, I am not really prepared to respond to Ms. Cross' arguments, but one thing I would say is that the government would intend to call on Mr. Kaufman whether or not he were designated a count witness.

THE COURT: Why? We are getting loaded, aren't we?

MR. KAUFMAN: Your Honor, that is exactly my point.

I don't think the government wants to call additional victim witnesses any more than the defendants want us to or your Honor wants us to.

I believe we are intending to call Mr. Kaufman whether or not he will be designated as a count victim. I think the best thing to do, the most efficient thing to do would be to go ahead and call him as a count witness and have the defendants agree that he be counted as a count witness for purposes of submitting 20 counts to the jury.

THE COURT: What is he going to testify to?

MR. KAUFMAN: Excuse me, your Honor?

THE COURT: What is he going to testify to?

MR. KAUFMAN: Your Honor, I have not been talking to him.

THE COURT: Who is going --

MR. KAUFMAN: Mr. Kaley is going to be putting him on.

THE COURT: Mr. Who?

MR. KAUFMAN: Mr. Kaley.

THE COURT: Who is Mr. Kaley?

MR. KAUFMAN: He has been the fourth attorney sitting at counsel table for the government.

THE COURT: I haven't heard a word from him for six weeks.

MR. KAUFMAN: This is going to be his first witness.

Your Honor, all I am saying is that I believe by virtue of what -- by virtue of our office having had conversations with him, we expect to call him.

If he is not --

THE COURT: I know. I am asking you, what is he going to testify to that is different from what was already testified to?

I warned you months ago that cumulation is going to stop the calling of witnesses.

MR. KAUFMAN: Your Honor, at this point I know he is going to be testifying about his attempts to resell the property and that he did resell his property at an auction that was held in Albuquerque.

I don't think we have had any victims as yet who have testified that they sold their land for approximately $500 maybe ten years after they bought it at an auction in Albuquerque.

That is part of Mr. Kaufman's testimony, and for that reason we do intend to call him.

Again, my point is, if we call him and he is not considered a co[illegible], that would presumably entitle us to call a substitute count witness and we don't want to do that any more than your Honor doesn't want us to do it. We would like to keep the number of these types of witnesses to a minimum as well.

THE COURT: You certainly didn't exhibit that great cooperation in the past, have you, Mr. Kaufman?

MR. KAUFMAN: Your Honor, we have always said that we never wanted to call more than the number that you were limiting us to, we just wanted the flexibility of being able to determine it at the trial.

THE COURT: You didn't make that offer to me in open court.

MR. KAUFMAN: Yes, we did.

THE COURT: What page of the record?

MR. KAUFMAN: At pretrial conferences, your Honor.

THE COURT: When?

MR. KAUFMAN: The day that your Honor restricted us to a specified -- to 20 count victims and you told us to come back the next day and specify which 20, I remember [illegible] asking your Honor, "Your Honor, we will reduce the [illegible] to 20, but what we ask for is the right, the flexibility [illegible] which 20 we want during the trial."

And your Honor said, "No, come in by 9:00 tomorrow morning with the names of the 20."

THE COURT: Is that what you said?

MR. KAUFMAN: Yes, your Honor. It's in the record.

We are not asking for any more than that now. And I think in the interest of expediting this that we treat Mr. Kaufman as a count witness so the government will not have to call an additional witness so that we can put 20 counts before the jury.

THE COURT: I am not so sure that we have 20.

But what is your position, Ms. Cross?

MS. CROSS: My basic position was that I didn't want to get into a situation as we did with Mr. Gusowsky where after he had completed basically his entire direct examination we were given the option of either agreeing to an amendment to the indictment or else having yet another witness called.

That's why we brought it to your Honor's attention at this point.

If it is limited to the 20 witnesses, 20 victim witnesses and do basically without this count, we have no objection, so long as his testimony is not cumulative as your Honor has pointed out.

I just didn't want to get --

THE COURT: He says it is not going to be cumulative and he wants to know whether you will accept him as a count witness.

MS. CROSS: Without any amendment in the indictment? That's my question.

THE COURT: Technically, there was an amendment in the indictment with Mr. Gusowsky.

MS. CROSS: I would not accept such an amendment with Mr. Kaufman. That's why I brought it to your Honor's attention before he took the stand.

THE COURT: All right.

When is he taking the stand?

MR. KAUFMAN: Probably sometime tomorrow.

THE COURT: All right.

Find out what he is going to testify to from the assistant who is going to take him on.

MR. KAUFMAN: I think what I have represented to your Honor is what he will testify to that has not been testified to by any other victim.

THE COURT: We will wait until tomorrow to rule on that.

What have you got, Mr. Arisohn?

MR. ARISOHN: Your Honor, with respect to the witness whose name is Ronald Williams, we were given certain information on Friday that he was going to be called by the prosecution soon.

The address for Mr. Williams on the prosecution's witness list was provided to the defense pursuant to your Honor's pretrial rulings was 1203 Cole Avenue in southeast Albuquerque.

Since last summer, that is, the summer of 1976, the defense has been trying to get in touch with Mr. Ron Williams to interview him prior to his testimony here. We have been informed that since last summer, Mr. Williams has not resided at the address given to us by the prosecution and we would respectfully request that the defense ben given an opportunity to speak to Mr. Williams prior to his testimony.

(Continued on next page.)

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MR. DEVORKIN: Your honor, we recently -- and I don't know the date of this -- learned that Mr. Williams had left the Albuquerque area and moved to the Corpus Cristi, Texas area, building a home there and has a ranch there.

Mr. Williams -- and that's what I know about his change of address. I don't recall when we learned about it. It was certainly, I believe, after we filed this list. But Mr. Williams testified at the FTC basically as to what he is going to testify to here.

THE COURT: That isn't the question, is it?

MR. DEVORKIN: No.

I don't know whether Mr. Williams wants to talk to Mr. Arisohn at all.

THE COURT: That isn't the point, is it?

MR. DEVORKIN: My impression is he does not. But I don't think there is too much love left between the two.

THE COURT: What has that all got to do with the request?

MR. DEVORKIN: The fact is the defendants --

THE COURT: You are as bad as Kaufman answering some snide remark that Arkim makes.

Can't we get down to basics and move this

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trial with all this nonsense going on?

Everybody figures he has to cover the other fellow's statement or else the record is going to be not clear.

Now, get down to the point.

MR. DEVORKIN: The defendants have known about Mr. Williams, they know what his testimony is going to be because they have had his FTC --

THE COURT: Give the defense his address which you have now for him.

Is he there?

MR. DEVORKIN: He is not there. He is in the courthouse.

THE COURT: The defense will have an opportunity to talk to him before he takes the stand.

MR. DEVORKIN: If he wants to talk to them.

THE COURT: Obviously if they want to talk to him, Mr. Devorkin.

MR. DEVORKIN: They can have that opportunity tonight, because I don't think we will get to him today.

THE COURT: All right.

MR. ARISOHN: I take it Mr. Devorkin will provide him where Mr. Williams is staying.

MR. DEVORKIN: I will make arrangements for you to confront Mr. Williams.

MR. ARISOHN: Thank you.

MR. WEIDNER: Your HOnor, I have one other thing.

We received on Saturday the designation of the portions of Mr. Friend's grand jury testimony which the government intends to read.

We will file with your Honor before court tomorrow morning our objections to those portions of the testimony.

THE COURT: When did you get them?

MR. WEIDNER: Saturday afternoon, late.

THE COURT: That's when I got them.

I have not looked at them yet. I have not had an opportunity to.

MR. WEIDNER: We will have our objections to your Honor before court tomorrow.

THE COURT: All right.

MR. KAUFMAN: Your Honor, I think Mr. Arkin may have a further objection with respect to another prospective witness. We ought to resolve that now so we know whether or not we are going to have any more witnesses that we can go forward with today.

MR. ARKIN: I hoped not to burden your Honor with it.

I spoke to Mr. Kaufman about this.

I received a telephone call yesterday afternoon, Sunday afternoon, from Loretta Mae, who is assisting the prosecution, indicating that a man named Richard Musgrove is going to be called today, and I said back to Ms. Mae that if that was the case, Sunday afternoon was kind of inconvenient for me to get the documents and prepare a cross examination and that I would hope the prosecution would hold that witness over until Tuesday so we could have the time to prepare the cross examination of him.

As I understood it, we were supposed to be apprised by Friday or any witnesses utilized by Monday, and there is no 3500 material on Mr. Musgrove.

It is, frankly, not a very big item or issue, but I would hope they would hold them over until tomorrow morning.

It is entirely in your Honor's discretion and I make that as a respectful suggestion rather than an application.

MR. KAUFMAN: The situation with Mr. Musgrove is we didn't know until this weekend he would be in. When we found out he was arriving on Sunday, we contacted

Ms. Dacey and Mr. Arkin to let him know that he was a possible witness for today, especially in view of the fact there was no 3500 material on him.

Our position is that while we recognize the fact that they found out late on Sunday, but they have also had all day today to get together whatever it is they know about Mr. Musgrove. It is not a question of their reviewing our 3500 material since there is none.

Mr. Musgrove will logically follow the witness Rae Seay from the telephone company.

If we get Mr. Seay on the stand today and we are finished with him, it is our intention to call Mr. Musgrove, and I believe that is late in the afternoon.

THE COURT: That means you would have overnight to prepare your cross examination, Mr. Arkin.

MR. ARKIN: That is fine, your Honor. As I say, I make it as a respectful suggestion, not an earnest application.

I prefer to have that time and I think considering the number of witnesses we have had to cross examine that the burden is on me cross examining or better handling it in the night rather than during the day handling somebody else in preparing the cross examination.

On the other hand, what little I know of him.

he is not the most complicated witness in the world if I was compelled to go on.

THE COURT: I gather Mr. Fleming still has cross examination of Mr. Avellanet.

MR. ARKIN: That might take a few minutes, that is true.

THE COURT: That will take one or two minutes and I'm sure Ms. Hynes has one or two minutes on redirect, so I think we are talking about a moot problem or one that will be mooted before the day is out.

MR. ARKIN: I think that is a fair projection, your Honor. I will just sit and let the Lord provide me.

THE COURT: Bring the jury back.

MS. HYNES: Your Honor, I just want to make the application, again, that after cross examination by Mr. Fleming and I believe there may be some also by Mr. Lavinsky, that I would ask for a short recess before redirect.

THE COURT: All right.

(Jury present)

RALPH A. AVELLANET, resumed.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Avellanet, my name is Fleming.

Do you recall this morning Mr. Arkin asked you about a note which you had written which says "Area," meaning Rio Rancho, "is on periphery of Albuquerque and heavy penetration unlikely for five to ten years"?

Do you recall that?

A Yes.

Q And did you testify that you had written that early on and that as you proceeded with your analysis you became more positive and solid in your conclusions?

A That's correct.

Q And those conclusions were that there were approximately 42 square miles of developable land north of I-40 in the northeast quadrant of Albuquerque, is that correct? That was one of your conclusions?

A You were talking pursuant to the statement, is that correct?

Q Excuse me?

A You were talking pursuant to the five to ten year statement?

Q Yes.

Did you testify that as you went further with your studies you became more positive and solid in the conclusions which you ultimately reached?

A Pursuant to that statement, which was that it was unlikely that development, significant mass penetration of the market would occur within ten or more years.

Q You were studying the local market for Rio Rancho, is that right?

A That's correct.

Q That would mean existing residents of Albuquerque moving to Rio Rancho as a permanent home?

A Yes.

Q All right.

And initially your notes contained this statement:

"Area," meaning Rio Rancho, "is on the periphery of Albuquerque and heavy penetration," that would be local penetration, "unlikely for five to ten years".

A Yes.

Q Is that correct?

A Yes.

Q And then did you testify that as you continued your study, you reached contrary conclusions and became more positive and solid in those contrary conclusions?

A Contrary to what?

Q To your original thought that heavy penetration of Rio Rancho would be unlikely for five to ten years.

A I got firmer that it would be a longer -- it would be ten or more years.

Q That's what I am getting at.

So intially it was five to ten years before there would be heavy penetration by local residents, and then as you went through your study you changed that to longer than ten years, is that correct?

A Yes.

Q And that change resulted from your study and analysis of Albuquerque, its historic trends and your estimate of population growth and where that population would reside, is that correct?

A Yes.

Q As a part of that further analysis and study which led you to change your conclusion or change your opinion, did you speak to people employed at the Harman firm who were working on a development in northeast Albuquerque on the Simms property?

A I don't know whether I talked to them prior to writing that note or after.

gtjw 10 Avellanet - cross

Q Well, let me ask you this:

Did you conversation -- I will withdraw that.

end tlb

Q Sometime during your study before you reduced your study to writing and was labeled master planning report, Rio Rancho Estates, Inc., before you reduced that to writing and during the study which led to the reduction of that to writing, did you speak to the people at the Harman firm who were involved in a development on the northeast side of Albuquerque?

A To the best of my recollection I did.

Q Was that development in a portion of what has been called the Simms property?

A I cannot recall precisely.

Q During your research did you also speak to Mr. George Carruthers of the city planning commission?

A Yes, I did.

Q Am I not correct that you spoke to the people at your firm, the Harman organization doing work in the northeast, and also to Mr. George Carruthers after you had made the note predicting heavy penetration within five to ten years?

A I would suspect that that note was written after I spoke to Mr. Carruthers and likely after I had touched base with people in the office that may at that time have been working on the northeast property or may have done so in the past.

Q Is it your testimony that you spoke to Mr. Carruthers and you spoke to people in the Harman office who were doing work in the northeast and having spoken to both Carruthers and those people your conclusion was that heavy penetration of Rio Rancho was unlikely for five to ten years?

A Or longer, sure.

Q Do you recall writing a note to which Mr. Carruthers directed your attention this morning which read,

"Areas on periphery of Albuquerque and heavy penetration unlikely for five to ten years."

Do you recall that?

A Yes.

Q You testified that you then did some more work and you changed that conclusion, changed that opinion?

A As so written there, yes.

Q You changed the opinion -- your opinion then became that heavy penetration from the local market was unlikely for a longer period of time, for after ten years?

A Sure.

Q Your opinion became more pessimistic so far as local penetration was concerned, is that right?

A Of significant magnitude.

Q It became more pessimistic, is that correct?

A Of significant magnitude.

Q Isn't it a fact that your opinion became more pressimistic after you spoke to Mr. Carruthers and after you spoke to the people at the Harman firm who were working on a development project in the northeast?

A Yes.

Q Now, did you include in the 42 square miles of what you called developable land, did you include vacant land within the built up portion of Albuquerque?

A It would have been factored into that assumption if it was located north of I-40 and east of I-25.

Q Now, I want to direct your attention to your conversations with Mr. Carruthers of the planning board.

You did speak to Mr. Carruthers, am I correct?

A Yes.

Q Did Mr. Carruthers tell you that the city planning commission was against leapfrogging of communal living in the Albuquerque area?

A I do not recall.

Q Did Mr. Carruthers tell you that the city planning commission wanted to increase density within the city limits of Albuquerque?

A He may have or he may not have.

Q Did Mr. Carruthers tell you about any difficulty he or the city had had in accumulating parcels of inner city vacant land for development?

A I don't recall.

Q Did Mr. Carruthers tell you about an effort that he had been making since 1957 to consolidate for development 160 acres of vacant land in inner Albuquerque?

A I don't recall. I doubt it.

Q Did you ask Mr. Carruthers if he foresaw any problems in developing vacant land within the built up portion of Albuquerque?

A I don't recall. I believe he would have --

MR. FLEMING: That is an answer.

Q Did you inquire of Mr. Carruthers or of anyone in the city of Albuquerque as to the policy of the public utility commission in Albuquerque with regard to the extension of new facilities to vacant land?

A I likely did.

Q What did they tell you?

A I don't recall.

Q Did you inquire of Mr. Carruthers what plans the city of Albuquerque had for the public use, as opposed to the residential use, of undeveloped land within the city limits of Albuquerque?

A I don't recall.

Q Did you review with Mr. Carruthers the historic trend of density, that is population density per gross acre in urban Albuquerque?

A In a general manner.

Q What did he tell you?

A Yes, there was a trend towards apartments.

Q Mr. Carruthers told you there was a trend towards apartments?

A Yes.

Q What did he tell you about the trend towards apartments in 1965?

A That there had been a pick up in apartment construction in the sixties.

Q Highrise apartments?

A No, mostly garden.

Q What was the pick up, how many garden apartments did Mr. Carruthers tell you had been built since 1965 within the city limits of Albuquerque?

A I don't recall.

Q Did you review with Mr. Carruthers population density in urban Albuquerque either per gross acre or per developed acre?

A I may have discussed this with him on reading the land use report.

Q What was the discussion?

A I don't recall.

Q Did Mr. Carruthers tell you that he wanted to infill the city? Do you know what the word "infill" means in terms of government?

A Yes, I do.

Q Did Mr. Carruthers tell you that he, personally, wanted to infill Albuquerque?

A I don't recall that he did in 1965.

Q Are you saying that you do not believe he did want to infill Albuquerque in 1965?

A I am not saying that. I don't recall.

Q You don't recall whether he discussed it with you.

Did he tell you that he wanted to increase density in order to lower the cost of city services?

A He may have. He may not.

Q You don't recall?

A I don't recall.

Q Did he tell you that the development of Rio Rancho Estates was inconsistent with his plan for Albuquerque?

A I doubt it.

Q Am I correct that the Harman firm had done work for the city of Albuquerque as early as 1958?

A I do not know.

Q Do you know whether the Harman firm is doing work for the city of Albuquerque presently?

A I don't know.

Q Did you study the problems -- any problems inherent with regard to the land known as the Atrisco grant?

A No.

Q Now, you testified that your firm, the Harman firm, at or about the same time that you personally were doing the study for Rio Rancho was engaged in assisting the development of a portion of the Simms property in northeast Albuquerque, is that correct?

A I am not certian whether we were working at that time or had been prior to my arrival on the Albuquerque scene in September.

Q Was that work being done for an Albuquerque real estate developer and builder named Dale Bellamah & Company?

A I don't recall.

Q Is it fair to say that the work that the Harman firm did or was doing for a developer in the northeast portion of Albuquerque was for residential development?

A Number one, I am not certain it was for a developer.

Number two, there is a good possibility it was for residential development.

Q You were relying upon what your colleagues were telling you in making your report to Rio Rancho in relying on your conversations with colleageus who were concerned with development in northeast Albuquerque, did you not so testify?

A Yes.

Q Rio Rancho -- your concern with Rio Rancho was as a market for local residents on a residential basis, isn't that right?

A Yes.

Q I would assume, therefore, that the colleagues to whom you spoke had or were having experience in residential development in northeast Albuquerque, is that correct?

A They may have been doing some planning for this occurrence.

Q You say they may or may not have been working for a developer. For whom else would they have been working for it not for a developer?

A The effective owner of the land.

Q That would be the Simms?

A I don't know.

Q In any event, is it fair to say that the work that was being done by the Harman people in northeast Albuquerque on residential planning necessarily was in conflict with the work which you were doing for Rio Rancho on residential planning?

A I would say it was not.

Q Is it fair to say that the Harman people working in the planning of residential developments in the northeast were hoping to attract local people to buy homes in that development?

A Or to sell land to people who thought they could do that, yes.

Q To sell land to people who would build homes for sale to the local market?

A Yes.

Q And you were engaged by Rio Rancho to consult Rio Rancho about building homes or selling land to people in the local market for the same purpose, isn't that correct?

A Would you repeat that question?

Q You, as part of the Harman organization, did a study for Rio Rancho with precisely the same goal, that is, residential development for local residents?

A Yes.

Q So that the Harman Company was doing work in the northeast of Albuquerque to tap the local market, is that right?

A It may or may not have been going on at the same time. I don't recall.

Q Whenever it was going on, it was to tap the local market, was it not?

A Yes.

Q And the interest of the Harman Company in connection with that northeast study was to benefit whomever they were working for to tap the local market, isn't that right?

A Yes.

Q And to advise their client how successfully to tap the local market?

A I don't recall if that was the nature of the assignment. I would anticipate that it was oriented to land design only.

Q For industrial development?

A I don't know whether that would be included in it or not.

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Q Is it your testimony on your oath that the development or the work that the Harman company was doing in northeast Albuquerque upon which you said you relied in making your projections was for industrial?

A As I recall, the Simms property is a large property and ther would be room for many uses.

Q Mr. Avellanet, will you tell me, assume that the work that the Harman company was doing in northeast Albuquerque was for industrial planning, you tell me how their experience would be relevant to your advice to Rio Rancho, which was residential?

A The question that I would have asked --

MR. FLEMING: May I have an answer, if your Honor please?

THE COURT: I think he is trying to give you what would be relevant.

A The question that I would have asked my colleagues would have been to what extent is that land likely to be developed and in what major use and its major use would be residential.

Now, the Simms property touches and it may have an intersection with I-25 so that there are market potentials for uses other than residential.

Q If we assume that the Harman company was doing an industrial study in northeast Albuquerque, will you tell me of what value that study and its result would be to your study of residential future at Rio Rancho?

A If we assume they were doing an industrial study, they would be aware of the land and its developability, they would have some working familiarity with the area of Albuquerque that this project is in.

Q You mean they would have seen it, is that right?

A Yes. In most cases. Sometimes we had to work just from maps that were sent to us.

Q They might not even have seen it. Did you ever take the trouble to drive out and look at it, tne Simms property?

A To the extent that I passed it on the way from Albuquerque to Santa Fe I saw it.

Q Did you ever stop your car and get out and have a look at it?

A I did not.

Q What is your best recollection, was the Harman company working on a residential project in northeast Albuquerque or on an industrial project?

A Probably mised use.

Q To the degree it was working on a project which was in part residential, did you consider the Harman company's work in the residential study to be in harmony with the Rio Rancho residential study?

A In no way.

Q Did you consider it to be to the benefit of the Harman company's other client if you made negative or pessimistic recommendations to Rio Rancho?

A No, I am not that presumptious.

Q They were both after the same market, were they not, the local Albuquerque market ?

A In the general sense that way, yes.

Q Did you tell anyone at Rio Rancho while you were doing the study for Rio Rancho that at the same time the Harman company, your company, was doing a study in northeast Albuquerque which was at least in part residential?

A If we were doing that at the same time, it would be my belief that we had let Rio Rancho know that.

Q Did you?

A I don't recall myself.

Q Am I correct that the reason you would have let Rio Rancho know that is because of the apparent conflict of interest in the two projects?

A No, I would think the --

Q The answer is no? Is the answer no?

A Yes.

Q Did you say anything in your report, the master planning study, Rio Rancho Estates, Inc., at the same time you were doing this report the Harman company was doing a residential study in northeast Albuquerque?

A I did not.

MS. HYNES: That assumes a fact not in evidence, your Honor.

THE COURT: He is asking whether it is in the report. He can ask the witness that.

Q Did you come to know that the Dale Bellamah company is one of the most powerful real estate companies in New Mexico?

MS. HYNES: Objection.

THE COURT: Sustained.

Q Do you know that the Dale Bellaman company is now presently ten years later involved in development on the west mesa?

A I had heard that.

Q Have you heard that now, ten years later the city of Albuquerque is planning to build a bridge across Albuquerque that enters to Taylor Ranch, the Dale Bellamah development?

A No, I hadn't heard that.

MR. FLEMING: Do you have the 1985 land use report?

Q We talked about projected population. I believe you gave testimony about a transportation plan of 1962 which predicted a population in excess of 800,000 people as one possibility, is that correct?

A Yes.

Q Did you read the planning commission's 1985 land use plan which was published in February of 1964?

A Yes.

Q Did that 1964 plan, which was captioned 1985 land use plan, state --

MS. HYNES: May I have the page, please, and just a moment to get our copy?

MR. FLEMING: Here, you can have this copy.

MS. HYNES: Thank you.

Q -- state that the third projection assumes a more liberal but not unreasonable estimate of future immigration and gives an estimate of 830,000 persons in the Albuquerque standard metropolitan area by 1985? Do you recall that?

A I recall that.

Q Do you recall the city planning commission characterized 830,000 people as not unreasonable, is that right?

A Yes.

Q Did you testify this morning that the cost of doing business is a proper and fair ingredient of the price you charge for a product?

A Yes.

Q That would include not only advertising costs but capital investment in property, is that correct?

A Yes.

Q You are familiar with the exchange rate at Rio Rancho?

A To the best of my recollection.

Q It is fair to state that when you put a golf course, for example, on a piece of property near an exchange rate area, that can tend to increase the value of the exchange rate area?

A How do you define value? If you are defining it as salability --

Q How do you define it?

A Paradise Hills just closer in --

Q How do you define value?

A The value is the price that a given property would bring on the open market.

Q Does capital investment into a developed area into which raw land may be exchanged for the purpose of building a house increase the value of that land?

A In regards to that exchange?

Q First of the developed land.

A Could you repeat that again?

Q Does capital investment in developed land increase the value of developed land?

A Normally.

Q If a person has a right to exchange raw land for a piece of developed land, does it therefore increase the price of the raw land?

A I would say it decreases it.

Q Decreases?

A Of that given property that he is exchanging. In the context of Rio Rancho, that lot that he is exchanging and giving back to the company would probably have a deflationary effect on -- well, it depends whether it is going from weak hands to strong hands in this case. When you get a whole bunch of lots all owned by a lot of people, if a lot of people put them on the market at once and the market can't absorb those lots, the value will go down.

If, in fact, only one person puts their lot up and you have got two buyers interested, two prospects, then the price of that lot may go up.

Q If I can exchange a piece of land for another piece of land which has been developed by reason of capital investment, does not that capital investment increase that value of what I own with the exchange rate?

A You did not have this right to exchange?

Q No, I do have the right to exchange.

A Oh, you had the right to exchange. If you bought that property with that value in mind, with that right in mind, it may or may not --

Q Isn't it correct if I bought the property, if I bought the raw land knowing that I had the exchange right, that with the exchange rate in mind, and the value of that raw land as a correleation with the capital investment into the developed land for which I can exchange?

A Repeat it, please.

THE COURT: Read the question back.

(Record read.)

A From what you read I didn't see a question there.

MS. HYNES: I object to form. I don't know what correlation Mr. Fleming is really talking about. I object to the form of the question.

THE COURT: Do you want it clarified?

THE WITNESS: Yes.

Q Assume that I buy a piece of raw land, Mr.

Avellanet. Assume that I have the right to exchange that raw land into developed land. Assume that the person from whom I buy the land makes additional capital investment into the developed land, all right.

Does not the capital investment into the developed land into which I have a right to exchange have a relationship to the value of the raw land which I hold with the exchange right?

A And therefore the value that you initially paid for it?

Q Can you answer my question?

A I can't. If I understand what you are asking, I am buying that raw land with the right to transfer and exchange the property in a developed part of the development.

Q Right.

A I am thereby placing a price or if I buy it, the value is satisfactory to me of what that exchange right is worth in that developed area as I envision that developed area.

Now, if you sell me that lot and that capital improvement I believe is going to be there when I so choose to exchange, you may not have put that capital in yet so you may just be bringing it up to the original expectations

I had.

Q Suppose I have put the capital in?

THE COURT: Before he purchases the raw land?

MR. FLEMING: No, after. Before he exchanges it.

A This may bring the land up to what I would envision it would be at the time I bought this exchange deal with the raw land.

Q My question is does capital investment in developed land increase the value of the raw land which may be exchanged for the developed land?

A You are not talking to me as a buyer; you are just asking me in terms of that raw land.

(Continued on next page.)

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Q I am talking to you as a land consultant, a land advisor, an analyst.

A I would say it would, yes.

Q All right.

Now, you testified -- I'm sorry.

In this report that you wrote to Rio Rancho -- just one moment.

MR. FLEMING: Excuse me one moment, your Honor.

(Pause)

Q Do you recall writing on page 13 --

MR. FLEMING: What exhibit number is the master plan and study, Ms. Hynes?

MS. HYNES: I am sorry, what was your question?

MR. FLEMING: The master plan exhibit number?

MS. HYNES: 66, I believe, Mr. Fleming.

Q Do you recall writing in your report to Rio Rancho, Government Exhibit 66, the 51-page report, at page 13:

"As crudely measured from the 1962 land use map Albuquerque transportation study, the topographic barriers east of the city and the Indian and military barriers north and south of the city lend availability for urban development east of the Pan American Freeway, I-25, approximately 48 square miles".

A Yes.

Q Do you recall that?

About 42 square miles of unused land on-- about 42 square miles of unused land are north of Coronado Freeway, is that correct?

A Yes.

Q Could you come down here, Mr. Avellanet.

This is the map you used, is that right?

A That's correct.

Q This is I-40?

A That's correct.

Q And you found 42 square miles of undeveloped land north of I-40?

A That's correct.

Q Can you show me where you found the 42 square miles?

A Outside this -- the mass yellow (indicating).

Q This is I-40, right?

A Yes.

Q Okay.

A Then basically, coming up here and here and coming down here (indicating).

Q Do you want to measure that?

MR. FLEMING: Do you have the ruler?

(Handing to the witness)

Q This is the scale down here, is that right? That would be 8,000 to an inch?

A Yes.

Q Okay.

8,000 feet to an inch --

A What can I -- the way it was measured is with something called a telemeter, in which I took some tracing paper and then traced off a block of area and then it was cut into parcels and then a draftsman measured the circumference of all these parcels and then with a conversion factor it was converted into square miles.

Q Would it surprise you that we had used the scale which appears in this map and measured that area and come up with 20 square miles?

MS. HYNES: Objection.

THE COURT: Overruled.

A It would surprise me if you used the same boundary lines that I did.

Q Can you do it with the ruler and show me the 42 square miles?

MS. HYNES: Your Honor, the witness has just described the procedure that was used which is not what Mr. Fleming --

THE COURT: He is now being asked to do it otherwise.

A I don't recall the exact boundary used here (indicating).

Q When you say saying "here," you are talking about east of the North Albuquerque Acres, is that correct?

A That's correct, and to the east here (indicating).

Q And on the map, this is North Albuquerque Acres, is that correct (indicating)?

A That's correct?

Q And you were talking about this area out here (indicating)?

A Yes.

Q That looks like --

A Yes.

Q That looks like hills to me.

A There are some square miles and I cited it in my testimony to Mr. Arkin in terms of compensating influences.

I picked up some of this and I came back around here, to the best of my recollection (indicating).

Q Mr. Avellanet, I have no further questions.

I understand there will be a recess.

Could you, while you are at the recess, forget about this area up here, which what appears to be rather hilly, measure the rest of the area on this scale and see what you come up with.

A Sure.

Q Thank you.

THE COURT: Anybody else?

MR. LAVINSKY: No.

THE COURT: We will have a recess.

(Recess)

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(In open court - jury present)

THE COURT: Do you want an answer to your question, Mr. Fleming?

Do you want to put the question again.

BY MR. FLEMING:

Q Mr. Avellanet, were you able to measure on Exhibit 60-A using the scale on Exhibit 60-A?

A I referred to my old notes and at the time the bailiff came in I was still trying to figure them out.

Q Did you make an attempt to use the ruler and the scale on this map, 60-A?

A I used the old notes which had the tracing on that map.

Q Did you make an attempt to use the ruler and the scale which appears on 60-A to measure the property which you perceived as developable in 1965 using this map?

A I made an attempt.

Q Did you reach any conclusion?

A That it would be better if I went to my notes.

MR. FLEMING: Okay.

THE COURT: You may redirect.

REDIRECT EXAMINATION

XXXX BY MS. HYNES:

Q Mr. Avellanet, you testified that in trying to recompute the 42 acres that you testified to --

THE COURT: 42 square miles.

Q I am sorry, 42 square miles that you testified to, you were referring to notes, is that correct?

A Yes.

Q Did you review notes that you did in connection with preparing the report which is Government Exhibit 66 in evidence, did you review those notes prior to testifying here today?

A Yes.

Q You testified to conversations that you had with Mr. Walsh and Mr. Sommerholder.

Did you take notes in connection with those conversations?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you review notes of conversations that you had with Mr. Herman Oberman before you testified today?

MR. FLEMING: I object, your Honor.

THE COURT: Sustained.

Q Mr. Avellanet, was there a reason for focusing on the 42 square miles in the northeast sector of the city of Albuquerque as you have defined it in preparing your report?

A Yes, there was because that was the trends of growth and they were decided in that direction and I was expressly interested in how much growth that area could take care of because there was no shortage of land in the Albuquerque area for development.

There was a distinct trend to the east. That is why I focused on that particular area.

Q Was there land capable of developing -- vacant land capable of development on the west side of the city of Albuquerque within the study area?

MR. ARKIN: Objection, if your Honor please.

THE COURT: Sustained.

Q You mentioned in response to a question by Mr. Arkin on cross examination that you didn't want to get into overkill with respect to the property in the northeast.

Can you explain that, please?

A I used the word "overkill" from the standpoint that, just to use a parable, if you can lift something with one hand, there is no sense asking sixteen people to help you lift this thing.

The point is that there was so much room, that my expectations of density with regard to handling Albuquerque's development that I saw that over the foreseeable planning time, which was Rio Rancho's sell-out time, that there was going to be sufficient room over in the eastern part of the city to handle most of the development pressures within Albuquerque so that those pressures would never really have a major impact on Rio Rancho's success in merchandising a large portion of its land locally.

MR. ARKIN: I move to strike the answer. The question was what does overkill mean.

MS. HYNES: He answered it.

THE COURT: Not to myquestion. I still don't understand what it means.

Q Can you explain more fully what you meant by overkill in connection with the amount of land available for development?

A Once I had dismissed the possibility of Rio Rancho being able to appeal to any substantive -- a significant portion of Albuquerque's market over its expected life, the Rio Rancho development, I went on to other items that I felt pertinent with regard to preparing this planning report. I didn't dwell on what land was developable, on the west side.

Once I saw there was enough capacity to handle what I expected to be Albuquerque's growth largely on the east side, that was that.

Q Why did you dismiss the possibility of Rio Rancho having a significant penetration in the local market?

A I did not feel that they could offer the product that could successfully compete for significant portions of the Albuquerque market with what would be offered in the east side.

You have to remember that in urban development if one builder has something good, all the other builders jump on it. In other words, there aren't secrets in terms of having a unique product that nobody can match other than perhaps if you have some unique land that a great amount of people place a high value on, then, you know, you may be able to out-compete someone in a simple manner.

Q Did Rio Rancho have any unique land that they may be able to place themselves in a competitive situation?

A We thought that they did along the bluff. Basically the lands east of Route 528. We felt the attraction of being by the river or near the river and overlooking the developed light of Albuquerque, if you will, would have special attraction to a select market group.

Q Other than the bluffland east of 528, were there any competitive advantages of the land west of Highway 528 which was the Rio Rancho land?

A We saw --

MR. ARKIN: I object. It is outside the scope of redirect.

THE COURT: No. On direct there was a little restriction in this area. I think it is perfectly proper on redirect to go into it.

A We saw no advantage to that land with respect to other developable lands to the south of the property and certainly to the east.

Q What do you mean other developable lands south of the property, what are you referring to?

A West Albuquerque. There was a lot of land that was desirable and comparable in many ways, in some ways better than Rio Rancho's land to the west, to the west of 528.

Q In what ways was the land south of Rio Rancho on the west side of Albuquerque better than Rio Rancho land?

A Closer to Albuquerque primarily. It offered better views in my opinion.

Q Do you recall testifying on cross examination in response to Mr. Arkin's question that there was a recommendation with respect to an access road for the local market through Corrales?

A Yes, that road was recommended to seek to disassociate the two developments that we recommended to tap the local market, Corrales Heights and Corrales North.

The effort was -- we felt that the potentials for Rio Rancho to tap some of the local market could be done by developing these two different subdivision areas to appeal to higher income groups than the socio-economic level of the market that Rio Rancho was selling to and was coming in the model home area.

Q Was that the Rio Rancho national market?

A Yes.

Q Can you explain what you mean by the people who were coming into the area that you just mentioned?

A Well, as I recall from my conversations with Rio Rancho personnel, the national market was primarily lower middle income and just the name and the local image that I recall people in the real estate business having in Albuquerque of Rio Rancho was that it wasn't a prestigious development.

Q At the time that you were preparing this study, how many homes, approximately, were there at Rio Rancho?

A To my recollection about 100.

Q Were those homes located west of Highway 528?

A They were located west of 528.

Q Were those homes sold to people from the national market as far as you knew?

A To the best of my recollection, they were.

Q Do you recall being asked by both Mr. Arkin and Mr. Fleming about a sentence that appeared in your work notes that referred to a local market not being possible for five to ten years?

A Yes, I do.

MR. ARKIN: If your Honor please, that was not the question. It had to do with the heavy penetration was the phrase.

THE COURT: That's right.

Q Did you tell your client Rio Rancho that they could expect a local market in five to ten years?

A That they could expect a local market in five to ten years, I did not.

Q What was your final recommendation and finding that you made to the client with respect to penetration by the local market?

A That over the life of the Rio Rancho Estates project of 55,000 acres, that would be about 18 years or so, they would not be able to anticipate significant penetration of the Albuquerque market.

Q When you mentioned the Albuquerque market, are you referring to that market that you have just described east of Highway 528 with the high income?

A That was the little portion of the Albuquerque local market that we thought we might attract in sight.

Q Do you also recall being asked about the sell-out period of 2,000 acres per year?

A Yes.

Q You testified that that information was provided to you by the client?

A Yes.

Q It was agreed upon to use those figures in terms of your projections?

A Yes.

Q I believe that you testified on direct examination that the client was also implementing new sales techniques, is that correct?

A Yes, he was. As I recall, they told me that they were beginning the dinners as a sales technique and were trying to improve their sales effort and success.

Q Did they report to you whether the sales dinners had improved their sales?

MR. RUBINO: I object, your Honor. This is not proper redirect.

THE COURT: The witness said they were just starting so how could he get a playback as to whether they were successful or not?

Q That is what I am asking whether he did get a playback, your Honor.

A As I recall, Mr. Sommerholder indicated that they were experiencing some success.

MR. RUBINO: May I have a date fixed for that report, your Honor?

THE COURT: Was that in the first three day conferences with Sommerholder?

THE WITNESS: No, this was sometime between the meetings of mid-December and the preparation of the final report.

Q Do you recall both Mr. Fleming and Mr. Arkin asking you questions with respect to the average density of people per acre in the Albuquerque area? Do you recall those questions?

A Yes, I recall those questions.

Q They asked you if the gross density was five people per acre. Do you recall those questions?

A I recall those questions, not that exact wording, but I recall those questions.

Q Does a gross density of five people per acre include all undeveloped land as well without people living on it?

A I am certain that it does because the density indicated to me in the urbanized portions of Albuquerque as reported in the 1963 land plan or survey was a density on the order of ten per acre.

Q Are these figures, the ten per acre, are those figures for developed land in Albuquerque?

A Those would be for developed land of all uses including school sites, industrial, commercial and some of which land would be idle, effectively vacant in itself.

(Continued on next page.)

Q I am going to show you what has been marked Government's Exhibit 60-B, which is part of the 1985 land use plan (handing).

Does this give information with respect to the density in the study area for developed portions?

A Yes, it does.

Q And what is the density for developed portions?

A Of Albuquerque, in 1962, it reports a density of approximately ten persons per acre.

Q And what is included in that area?

A All residential use, commercial use, industrial, including some open land, and public lands, including some open lands.

Q Are you familiar with the -- withdrawn.

The 42 square miles that you estimated was available in the northeast sector, I believe that there has been extensive testimony that a portion of that is the Simms property, is that correct?

A That's correct.

Q And you have also testified on cross examination that you had discussions with people in your firm with respect -- to the best of your recollection, you had discussions with people in your firm with respect to the Simms property, is that correct?

A That's correct.

Q Were you ever advised that there were significant legal impediments on the Simms property so as to prevent its development?

MR. ARKIN: Objection, if your Honor please. The witness testified on cross he had no recollection of any particular conversations. There is no foundation for the question.

THE COURT: That's what he said. That's what he said.

In fact, he said he couldn't even define the Simms property.

Objection sustained.

Q Do you recall being asked on cross examination about the Wilbur Smith transportation study?

A Yes.

Q And the Wilbur Smith transportation study used a population projection of 825,000.

Do you recall that?

A They did.

Q And do you recall whether the Wilbur Smith study projected -- withdrawn.

In what areas did the Wilbur Smith study project the most absolute growth?

A Could I refer to my notes in answering that?

THE COURT: If you have to refresh your recollection, yes.

THE WITNESS: I have to refresh my recollection.

THE COURT: All right.

What exhibit is that? Is that in evidence? The others would want to refer to it, too.

MR. ARKIN: It is in evidence, your Honor.

THE COURT: What is the exhibit number?

MS. HYNES: What is he referring to, the map?

MR. ARKIN: EJ, your Honor.

THE COURT: Defendants' Exhibit EJ is the Wilbur Smith study, is it not?

MS. HYNES: The witness is referring to notes that have been previously marked --

THE COURT: Ms. Hynes, he is being asked questions about the Wilbur Smith study, and I asked whether the Wilbur Smith study was in evidence and I have been informed that it is Defendants' Exhibit EJ.

MS. HYNES: That's correct, your Honor.

THE COURT: All right.

Can't he look at EJ to find out the answer to that?

MS. HYNES: Yes.

Q Let me show you Defendants' Exhibit EJ (handing).

A Well, this is the map that I calculated it from, and to my recollection, about 40 per cent of the 500,000 incremental population growth Wilbur Smith anticipated would be in west Albuquerque.

Q And 60 per cent would be where?

A East of the river.

Q Did the Wilbur Smith study also cite the city planning department estimates that there was sufficient developable land within the study area to accommodate a population of over two million, not counting Indian reservations to the north and south of Albuquerque and the mesa to the west?

A To the best of my recollection, it did.

Q The study area that we have been talking about that is dealg with in the Wilbur Smith report and is also dealt with in the 1985 land use plan includes portions of Bernalillo County and the village of Corrales, is that correct?

A That's what I understand.

Q And it does not include Rio Rancho Estates, is that correct?

A That is my understanding.

MS. HYNES: Your Honor, can I have just a moment?

(Pause.)

Q Mr. Avellanet, do you recall being asked by Mr. Arkin on cross examination, referring to page 4706 of the transcript:

"Q And would you say it was also their intention to develop this property?"

I'm sorry, reading from page 4707, line 18:

"Q And you never had any feeling that these people, who were your clients who engaged you, would really sell out the land and walk away without developing it, did you?

"A Developing it or a portion of it?

"Q Developing it as need was.

"A As the needs were?

"Q Needs were and came to be.

"A To the extent that they had developable space to accommodate those that come, I had no concern that they would not meet the needs of the people they could accommodate in that space."

Do you recall being asked those questions on cross examination by Mr. Arkin?

A Yes, I recall those.

Q Was it your impression that the people from Rio Rancho had serious intentions of developing the entire 55,000 acres?

A Clearly not.

Q Can you explain that to the Judge and the jury, please?

A Rio Rancho operated on the operatic assumption that 5 per cent or less of the people would come, and they set aside this land as a reserve to accommodate actual development for people who bought lots and would want to live in the Rio Rancho Estates development.

There was no intention, to the best of my knowledge, of developing the whole 55,000 acres.

I know I was told that there was -- Rio Rancho had sufficient water at that time for at least 4,000 homes, which worked out to roughly the 5 per cent of the sites that might be utilized, the 5 per cent of the buyers who might come.

Q And when Mr. Fleming asked you on cross examination about this exchange privilege, to your knowledge, the price that was charged by Rio Rancho for the land that was sold nationally, do you know what that included?

A It included the exchange right for a parcel of land of equal size in the area that had utilities and other improvements that were slated to be there.

That's basically what, as I understood, the exchange right did with the specific parcel of residential land that a buyer bought.

Q To your knowledge, could only one half acre lot be exchanged for each home that was built?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q To your knowledge, Mr. Avellanet, was there an exchange right for commercial lots that were sold?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q To your knowledge, was the company going to provide utilities to the lots it sold nationally that were outside of these exchange areas?

MR. ARKIN: Objection.

THE COURT: I don't understand the question.

The witness has said they intended to provide utilities for the proportion of the people whom the corporation thought would come to live at Rio Rancho.

That's what he said both on cross and on redirect.

Q Do you recall Mr. Arkin referring to the CBD study on cross examination?

A Yes.

Q Do you recall him referring to notes that you had taken on the CBD study?

A Yes.

Q And do you recall Mr. Arkin referring to those portions of the notes, of your notes which said, "Industry, bridges, amenities, et cetera, could pull growth to the west." Do you recall that?

A Yes.

Q Let me show you what has been marked 3543-YY (handing).

Are those also work notes thatyou took in connection with preparing this report?

A Yes.

Q And do those work notes also deal with the industrial prospects for the west side?

A Yes.

Q And what do those notes reflect the industrial prospect of the west are?

MR. ARKIN: Your Honor, I don't believe this is proper redirect.

(Continued on next page.)

THE COURT: Sustained.

Q In your final report to the company, do you recall what your finding was with respect to the prospect for industrial growth on the west side?

MR. ARKIN: Objection.

Q Mr. Avellanet, would you agree that if there were not sufficient number of lots set aside to permit each lot sold to be exchanged, that it would affect the value of the lots that were sold nationally?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall being asked on cross examination by Mr. Arkin and Mr. Fleming being referring to page 16 of Government Exhibit 66 in evidence, which related to prices for various pieces of land?

A Yes, I do.

Q Where did you get the information, as best you recall, with respect to those prices?

A I got these from different individuals that I talked with in the Albuquerque area as to what was the going rate for lands in different developments and different areas of the community for purposes of trying to approximate potential values for the Corrales Heights and the Corrales North developments that we proposed each of Route 528.

Q Were those figues in any way to be utilized in pricing undeveloped lots west of Highway 528 that were sold nationally?

MR. ARKIN: Objection.

THE COURT: Overruled.

A They were not.

Q Were those examples, to the best of your recollection, did they all deal with residential land?

A To the best of my recollection, they certainly did. That's why I was seeking comparables, something that I could relate to the sites that might be offered in the developments that we proposed east of Route 528.

Q And can you describe to the jury, please, what you meant by comparables?

A Well, by comparables, I mean lots that I can draw some parallels with in terms of lots that might be offered for sale in the developments that we proposed.

For example, do I have a certain number of lots with a view and are located on the west side, are there any other lots that have been sold recently with a view on the west side, and to what extent -- how does their access to, let's say, downtown Albuquerque compare with the access I might offer in the development I am proposing?

You make an effort in looking at values of land in different portions of the city to try to -- to try to not compare apples and tomatoes. You are trying to compare an apple and an apple with regard to some like characteristics.

Q Would comparing industrial land in Albuquerque to undeveloped homesite land sold nationally, would that be a comparable comparison?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I would -- in no way.

Q Would a comparison between commercial land in downtown Albuquerque to homesite, to undeveloped homesite land sold nationally sold at Rio Rancho, be a comparable comparison?

MR. ARKIN: The same objection, your Honor.

A Of course not.

THE COURT: Wait. But that isn't the point that the examples were used.

Q Could you recall Mr. Fleming and Mr. Arkin asking you about including advertising costs in pricing land?

A Yes.

Q Do you recall being asked by Mr. Arkin and Mr. Fleming whether you considered it fair to include the advertising costs in the pricing of the land?

A Yes, I recall that question.

Q Is it fair to advertise land as being sold on a low markup land which has been bought for $180 an acre and is sold for several thousand dollars an acre?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Do you recall being asked on cross examination and testifying that value of land means what it can bring in the open market?

A Yes.

MS. HYNES: Your Honor, if I may just have a moment.

(Pause)

MS. HYNES: Your Honor, I have no further questions of this witness.

THE COURT: No more for you, Mr. Arkin.

MR. ARKIN: Excuse me?

THE COURT: No more for you.

I have one.

This dispute as to five persons per acres and ten persons per acre, the ten persons per acre was based on a definition of land in existing developed areas?

THE WITNESS: That's correct.

THE COURT: Whereas the 42 square miles you referred to are undeveloped areas?

THE WITNESS: That's correct.

THE COURT: How can you transfer one to the other and make them comparable?

THE WITNESS: I anticipated that future development might be at that density.

THE COURT: On what basis?

THE WITNESS: Well --

THE COURT: Why shouldn't it be gross in both places, especially since the developed is undeveloped, therefore, it is gross?

THE WITNESS: Well, I'm looking at it in gross terms.

THE COURT: Then it would be five per acre, wouldn't it, and not ten?

THE WITNESS: No, no.

You define -- well, it depends upon your density definition, but figures shown to me or that I used as a base material was the land use survey done by the city in 1962/63. That indicated gross development of the portion of the Albuquerque area that was developed ran about ten people per acre.

THE COURT: Now you are quibbling again. I am talking about gross acreage, not developed acreage.

The 42 miles you referred to are undeveloped lands.

THE WITNESS: That's correct.

THE COURT: So how can you in your mind assume that they are going to be the same as developed land when they become developed?

THE WITNESS: I make that assumption that they will handle a certain density of people in this case.

THE COURT: But if you develop the whole 42 miles, wouldn't they be comparable in gross acreage to what Albuquerque was gross?

THE WITNESS: I don't recall what Albuquerque was in gross.

THE COURT: Well, the figure is 42,500 acres within the city with a population of 215,000, five per acre in 1962.

THE WITNESS: What they report in this land use study was there were 29,900 acres developed.

THE COURT: You go back to developed and I am talking about gross.

THE WITNESS: Well, okay.

You mean gross lands within the city?

THE COURT: Absolutely, because your 42 miles is gross land. That is all you got is gross land. You do not have developed and undeveloped in the 42 miles.

THE WITNESS: Yes, but --

THE COURT: And you cannot assume that every square mile of the gross acreage in the undeveloped land is going to be all developed, because in Albuquerque itself it is not all developed. Part is developed and part is not developed.

THE WITNESS: Well, I think we are talking about two different things.

THE COURT: I am talking about the same thing, you are talking about two different things.

THE WITNESS: I think you are talking about what is developed within the city limits.

Now, the city limits could include a great amount of vacant land that could be developed but it has not been developed.

THE COURT: Your assumption is that the 42 square miles will be fully developed?

THE WITNESS: That is correct.

THE COURT: But that has not been the

history of the city of Albuquerque, has it?

THE WITNESS: In terms of not -- of having some undeveloped parcels?

THE COURT: Yes.

THE WITNESS: That's correct.

THE COURT: Therefore, why shouldn't the history of the 42 square miles be the same if you are projecting futures from past trends?

THE WITNESS: Well, there is a possibility it could.

There was -- there is a possibility it may be more dense.

The land use trends at this point in time are certainly toward denser development.

THE COURT: We are talking about Albuquerque.

THE WITNESS: Yes, yes.

THE COURT: All right. You are excused.

MS. HYNES: Your Honor, may I clarify two things because --

THE COURT: No.

MS. HYNES: Your Honor, I think you are under a misimpression and I can clarify --

THE COURT: I am not under a misimpression. I was clarifying something for myself.

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MS. HYNES: I understand, your Honor, but --

THE COURT: You may step down.

Next witness.

(Witness excused)

MR. KAUFMAN: The government calls Raymond Seay.

LEMUEL RAYMOND SEAY,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Seay, how old are you?

A I'm forty.

Q And where do you live?

A Albuquerque.

Q Where in Albuquerque?

A The Northeast Heights.

Q And what is your educational background?

A I have a degree in math from the University of Texas.

Q And who are you currently employed by?

A Mountain Bell.

Q Is that the telephone company in Albuquerque?

A Yes, sir.

Q And in what capacity are you employed by Mountain Bell?

A I'm a supervisor of forecast group. We forecast all the various things, growth and so forth, for planning in the state of New Mexico.

THE COURT: Mr. Seay, I have to ask you to please talk a little more slowly.

THE WITNESS: Okay.

Q How long have you had that position?

A Six years.

Q And what are your duties and responsibilities in that position?

A Oh, I essentially forecast or supervisor five forecasters, one of which is in Albuquerque, the rest is for the rest of the state.

Like, say, we forecast revenue stations to plan our central office facilities, cable facilities, things like that.

Q When you say you forecast stations, what do you mean?

A Telephones.

Q Actual telephone numbers?

A Telephone numbers and telephones.

Q Would another phrase for that be terminals?

A Yes, terminals is another phrase for that.

Q How long have you been involved in forecasting in Albuquerque for Mountain Bell?

A The same number of years, six years.

Q How long have you worked for Mountain Bell?

A Fifteen.

Q Fifteen years?

A Yes, sir.

Q And how long have you worked for Mountain Bell in Albuquerque?

A Nine years.

Q Is that how long you have lived in Albuquerque, nine years?

A Yes, sir.

Q What did you do for those first three years that you were with Mountain Bell in Albuquerque before you became forecast supervisor?

A I was both what we call market consultant --

THE COURT: You are talking too fast and our court reporter, who is the best in the country, can't get you.

THE WITNESS: I'm sorry.

A I was a marketing consultant, which is essentially the salesman to the business market for telephones, and then I was a sales manager over the same type of people.

Q Now, you said that forecasting involves projecting the number of phones that would be needed in the future; is that correct?

A That's correct.

Q Does it also have to do with forecasting capital projects that Mountain Bell will have to undertake?

A Not actually the projects, but forecasts would indicate for the engineers what projects it would be taken under from a capital standpoint.

Q What background work and research is done by your department in preparing these forecasts?

A Well, we essentially start off with the New Mexico Bureau of Business data as far as it relates to population, households for the Albuquerque area, which is the SMSA area.

We then convert that through our own tools to convert that into telephones or telephone numbers. We then take a look at each project that we can find out about that is going on in town -- let me back up just a little bit.

When we take a look at that, we take a look at that on a twenty year basis to establish essentially the control basis what we call it. We break that down into five year segments as to where we are at and then we take --

Q Let me interrupt.

What do you break into five year segments?

A The telephones themselves.

Q This projected number?

A Yes.

We then take a look at what we call wire center or central office, however you want to look at it, and develop all the known construction projects that we know about and also make our own estimates of market penetration as far as new telephones in existing areas.

Q How do you find out about construction projects that are either existing or planned?

A Well, we have -- we get all the housing permit data from the city. We also subscribe to what is called the Dodge reports, which give you leads as soon as the project is announced.

Q Tell us exactly what a Dodge report is.

A Well, it is nothing more than at the time a project is undertaken, usually the first report is the time when the architect is assigned to the job and it usually talks about the money that is related to the project, the number of buildings, the number of square foot if you are talking about an office building, and they will track that through until actually a contractor in named.

Q Does it give the location of the project?

A It will at some point. If not, usually you can call the architect and find out.

Q Is this true for all types of construction?

A It's true definitely for all business types and major apartments, large subdivisions.

Many times as far as one unit,two units around town, no, you might not get anything on it.

Q Is that the type of work, then, that is done in connection with breaking these projections down into the five year segments?

A We take that and also, then, of course, talk to various builders that we know about in town and other business people or other people that are dealing in growth, feel what their ideas are, and then the forecast essentially makes a twenty year forecast for each office.

Q When you say each office, directing our attention to Albuquerque, what do you mean by "office"?

A It's a geographical area that we serve out of what we would call a switching entity. It would be like a substation under an electric company or something like that.

Q And how many such switching entities or offices are there in the Albuquerque area?

A I believe there are nine, if I remember the count.

MR. KAUFMAN: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

A Yes, there are nine.

MR. KAUFMAN: Mark these 1501 and 1502, please.

(Government Exhibits 1501 and 1502, respectively, marked for identification)

xxx

Q Mr. Seay, I show you what has been marked as 1501 and 1502, and ask if you can identify these?

A These are the maps we furnished you. You blew them up.

Q And do these maps show the offices or switching entities in the Albuquerque area?

A They do.

MR. KAUFMAN: The government offers 1501 and 1502.

MR. ARKIN: Were these premarked, Mr. Kaufman?

MR. KAUFMAN: These are part of the -- I

don't think we want to do it in open court.

THE COURT: What number were they listed as?

MR. KAUFMAN: They were not premarked, your Honor.

THE COURT: They were not premarked. That's the question.

(Pause)

THE COURT: Put them aside. You can look at them overnight.

Go on without them.

MR. KAUFMAN: Your Honor, I need them to ask the --

THE COURT: Go on to some other questions, then.

Q Mr. Seay, are the forecasts then broken down in terms of the individual offices in the Albuquerque area?

A That's correct.

Q And how is that done?

A Well, like I say, primarily the forecaster will look at the short time what we can actually find out--

Q Slow down. Slow down.

A I'm sorry.

Look at the building construction and also the past trend for that particular office and make a short term forecast, also then make a long term forecast to match what he is talking about for the whole area.

Then at that point, after each office is done, then the control forecast becomes controlling and essentially makes sure that the smaller entities add up to what the top view is, which may add or subtract certain offices in that process.

Q In other words, you then correlate each individual projection with your total control projection?

A That's correct.

Q And what is the result of this procedure? What do you eventually come out with?

A Well, we eventually come out for each office essentially the number of terminals or telephone numbers for each office and we predict that for -- primarily we are interested in the first five years.

We send that to our engineers. They look at the offices' capacities and so forth and decide where there needs to be new buildings or new switching apparatus added. If so, then that goes into a capital program, if you will.

Q When you say that you are forecasting for future telephone numbers or future telephone terminals in each of these office areas, are you referring to a net increase or decrease of telephone numbers or is it a gross figure?

A It's an in-service figure that we are actually forecasting.

MR. FLEMING: I am sorry, I didn't hear that.

A It is an in-service figure of a gross number. It would be a total in-service, if you will.

Q In other words, tell me if I am right or wrong on this.

If you project an increase of let's just say 2,000 new telephone terminals, could that be reflective of 2500 new telephone numbers plus the loss of 500 existing telephone numbers?

A That's correct.

MR. ARKIN: I object, your Honor. I do not understand the question.

THE COURT: He is asking for a definition which the witness has said is correct.

Q So in other words, it is a net figure accounting for future increase plus whatever old numbers making out of service?

A That's correct.

Q And is the projected net increase of telephone service reflective of anticipated growth in that area?

A It is in our terms, yes.

MR. FLEMING: That is what I was about to object to, your Honor. It seems to me that is a special meaning for the telephone company.

THE COURT: Well, he means for telephone lines.

They make a projection as to what they think is going to occur in the next five years.

MR. FLEMING: Because I -- we have so many kids, your Honor, so that does not necessarily mean --

THE COURT: That is part of the projection. You may cross examine him on it.

MR. FLEMING: All right.

Q Are these five year forecasts broken down further?

A They usually are to cable routes. We usually have four cable routes for each office and we break it down to those four areas. That's the way we get a forecast in, to decide how much cable plan in order to add, and not just the office themselves.

Q Does Mountain Bell also maintain yearly records of the actual numbers of terminals and the actual yearly increase in telephone terminals per each of the offices in the Albuquerque area?

A We maintain the actual number of terminals in service.

Obviously you can subtract one year from the other and get the actual number of increase.

Q Back to what year do these records of actual numbers of telephone terminals in service exist to?

A We submitted to you, I believe, from 1960 on.

Q From 1960 to date?

A To date.

When I say to date, I think the record goes up to 1975 somewhere.

Q As a result of this work that you have been responsible for, including both forecasting and the reports dealing with actual numbers of telephones in service, is it fair to say that Mountain Bell has been forecasting that Albuquerque would experience growth in all sections of the city?

A That's correct.

MR. FLEMING: I object to that, your Honor.

THE COURT: The forecasts themselves would be the best evidence of that.

MR. FLEMING: That's why I am objecting.

THE COURT: Do you have them?

MR. KAUFMAN: Yes, your Honor.

THE COURT: Why don't you offer them?

I gather they are the official records of the telephone company.

MR. KAUFMAN: Mark this 1503.

(Government Exhibit 1503 marked for identification)

MR. KAUFMAN: Mark this 1504.

(Government Exhibit 1504 marked for identification)

Q Mr. Seay, I show you what has been marked 1503 for identification, and ask if you can identify that (handing).

A Yes. This is the forecast by the central office we are talking about.

THE COURT: What?

THE WITNESS: This is the forecast for the offices we were talking about.

Q And back to what year?

A From 1971 to 1975.

Q Now I show you 1504 for identification, and ask if you can identify that (handing).

A These are the actuals for each one of the offices from 1960 to 1975.

THE COURT: 1960?

THE WITNESS: Yes.

THE COURT: To 1975?

THE WITNESS: Yes, sir.

Q Most of these -- in fact, these reports generally consist of a conglomeration of numbers, is that correct, Mr. Seay?

A That's all they consist of, with the office name.

MR. KAUFMAN: The government offers 1503 and 1504.

THE COURT: Why don't we adjourn now until tomorrow morning. I am sure the defendants will want to take a look at those exhibits.

10:00 o'clock tomorrow morning.

(Jury left the courtroom)

MR. WEIDNER: Mr. Friend has a personal commitment which he would like to attend to with your Honor's permission tomorrow morning and not be in court at that point. He has authorized me to be here representing him.

THE COURT: Is that true, Mr. Friend?

DEFENDANT FRIEND: Yes, sir.

THE COURT: The application is granted.

d day

(Adjourned to December 14, 1976 at 10:00 o'clock)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ralph Alphonse Avellanet (Resumed)		4762	4864	
Lemuel Raymond Seay	4891			

EXHIBIT INDEX

Government	Identification	In Evidence
1500	4752	
1501	4897	
1502	4897	
1503	4903	
1504	4903	

Defendant Howard Friedman and Henry Hoffman	Identification	In Evidence
EP	4798	
EQ	4806	

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 14, 1976
10:00 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning. Do you have an application, Mr. Arkin?

MR. ARKIN: Yes, your Honor, we do, a brief one.

Your Honor, as I understand it, among the next few witnesses are witnesses named Peter Olguin, Ron Williams and the man named Kaufman who your Honor was told about two days ago by Ms. Cross.

My application with respect to these individuals is that as I understand it, they are going to be brought to court to testify in respect to the absence of a resale market in Albuquerque.

Under the present circumstances, I believe that their testimony would be irrelevant for the following reasons:

Your Honor initially at the inception of this case ruled that the failure of the defendants, of AMREP, to inform its prospective customers of the absence of a resale market was not in the case, that is to say, that was no part of the criminal charges insofar as your Honor ruled.

Secondly, there is no evidence at this point in the trial, after six weeks of testimony, to sustain an allegation that it was part of any scheme or embraced within any scheme to defraud that a representation would be made as to the existence of a resale market.

To be sure there is testimony or evidence that people were told at one time or another the company when all the land was sold out would have a resale office. This is not the same thing.

There is no evidence to sustain an allegation that it was part of any scheme to tell people that there was going to be a resale market or that there was a resale market. Indeed the evidence is to the contrary.

That being so, the evidence to be adduced from these three witnesses would only go to the claim of falsity of an allegation or a representation which is not at issue in this case at the present time.

My point being that evidence of falsity of a representation as to the existence of a resale market being as there is no evidence to sustain a claim by the prosecution that such a represention was made would be irrelevant.

There is no foundation for it and so I ask that these three witnesses, unless the offer of proof is somewhat different than I expect it to be, these three witnesses be stricken.

THE COURT: Mr. Kaufman.

MR. KAUFMAN: Your Honor, as I think the government has demonstrated, this land was sold to customers as a good financial investment, something that they should buy because it was better than the stock market, better than mutual funds, better than bank accounts.

Investment is only good if you can liquidate it, if you can sell what you own and get something out of it, whether or not it is a profit.

It has always been the government's position that when you sell something for an investment at a time when you know that what is being sold cannot thereafter be resold is a misrepresentation.

In other words, you sell something to somebody as an investment and you know that that person will not be able to turn around and resell it, that is a misrepresentation.

Of course, these defendants sold their land not just as an investment, but as a good, safe, sound and secure financial investment at a time when they knew there was no resale market for it.

It is the government's position that we are entitled to prove that there was no resale market for it. The defendants' own letters to its customers show that they knew there was no resale market and the government -- it is the government's position that we have the right to show what the resale market was in Albuquerque.

THE COURT: You have three witnesses to do this in addition to the testimony we already have?

MR. KAUFMAN: We don't have any testimony with respect to any realtors from Albuquerque. We are only calling one realtor in connection with the overall resale market in Albuquerque, that is Ron Williams from the Multiple Listings Service.

THE COURT: Who are the other two?

MR. KAUFMAN: Peter Olguin will be testifying about an auction he ran in Albuquerque in August of '75 and as we discussed yesterday, Mr. Kaufman will be the first and maybe I am not sure but maybe the only victim that will be testifying that he actually disposed of his land at that auction.

THE COURT: The objection is overruled.

Bring the jury in.

Have you worked out the problem with the witness you mentioned yesterday?

MR. KAUFMAN: We have had no further conversation. Ms. Cross at the end said they were not willing to accept a variance with respect to that witness.

THE COURT: What is this witness going to testify to that you don't know already?

MR. KAUFMAN: Again, he will be the first victim to testify that he disposed of his land at an auction some I think eight or ten years after he bought the land and that he disposed of it at the auction at a price well below, I believe, what he paid for it.

(Jury present)

LEMUEL RAYMOND SEAY, resumed.

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

At this time the government renews its offer of 1501 and 1502 for identification.

MR. ARKIN: Your Honor, we object. These

do not appear to be to any kind of scale and this one, proposed Exhibit 1502, which purports to be an extensic of 1501, is not to the same scale as 1501. That is obvious if there is any scale at all.

Again, there are a variety of exhibits in this case which I think would, if such an exhibit is necessary, that the government could use to the same effect.

In other words, they are cumulative.

THE COURT: What are they?

MR. KAUFMAN: Your Honor, these are maps which show the boundaries of the different offices or switching entities as the witness defined them yesterday and we are offering this map to show where the different geographical areas are in Albuquerque for the telephone company's purposes.

The other maps that we have in evidence don't show that.

THE COURT: What do we need that for?

MR.KAUFMAN: Because there will be testimony forthcoming from this witness that pertains to the different geographical offices in Albuquerque and unless the jury knows --

THE COURT: What is the relevance of that to this witness?

MR. KAUFMAN: He will be talking about growth in particular areas of Albuquerque.

THE COURT: He can do that without those.

MR. KAUFMAN: It will just be difficult to visualize what areas he is talking about.

THE COURT: Objection sustained.

MR. KAUFMAN: The government renews its offer of 1503 and 1504 for identification.

MR. ARKIN: May I voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Seay --

A Yes, sir.

Q -- Government Exhibit 1503 and 1504 consists of forecast information prepared by your office, is that correct?

A One of them does. The other one is just the actions reported year end.

Q These particular forecasts were prepared under your supervision?

A That's correct.

Q Based upon materials supplied to you by other agencies, is that not correct?

A As far as some of the base data we look at, that's right.

Q The base data supplied to you by the University of New Mexico?

A In terms of population of households, right.

Q Where else do you obtain information to form your data base?

A As far as outside sources, like I mentioned yesterday, dodge reports, housing permits from the city, meetings with various builders around town, that type of thing.

Q So the information which is contained in these particular exhibits is information which is dependent upon information which you receive from third persons within your control and under your supervision, isn't that so?

A As far as the future activities, as far as the past actuals, that's collected by outsiders.

Q Insofar as the future activities, that's true?

A As far as building activity, that's right.

Q That's based on information derived from third sources?

A That's correct.

MR. ARKIN: If your Honor please, we object to these on the basis that they contain --

THE COURT: How can you object to 1504?

MR. ARKIN: Excuse me, then 1503, obviously I have no objection to the past -- the historical data contained in here, I have no objection, you are quite right, your Honor.

I do object to 1503 which contains forecasts which is based upon information provided by third sources. It is not subject to cross examination. It is therefore hearsay and opinion and again not subject to cross examination by us.

These are projections again which were not made by this particular gentleman or his office. They were made, in effect, upon assumptions provided by third parties again not subject to cross examination.

THE COURT: I will see counsel at the bench.

(At the side bar.)

THE COURT: I don't quite understand where he gets the forecasts from. To the extent that he bases his forecasts on building permits issued in the past and the rate of their increase, the forecasts would be admissible, but I gather he is taking them from realtors on the street who tell him what they think will happen.

MR. ARKIN: Dodge reports and so forth.

MR. KAUFMAN: I think he explained yesterday that they refer to the reports of the Bureau of Business Research.

They refer to a dodge report which he testified as showing major building construction plans in the area.

They do on site inspections.

THE COURT: That's past. I am talking about future. He says he speaks to realtors who give him their ideas of what is going to happen.

MR. KAUFMAN: They do on site inspections of the territory to see what is happening there in terms of what the future need will be for telephone terminals.

With respect to all projections, your Honor, with respect to the council of government projections, with respect to the Wilbur Smith projections, with respect to the planning department projections, all projections --

THE COURT: These are official bodies directed by law to do it. This is just a private company in business to make money.

MR. KAUFMAN: I haven't asked him but my feeling would be that the utility company probably is regulated by state statute.

THE COURT: As far as their rates are concerned, but not their projection figures in the future, how many coin boxes they will need.

MR. KAUFMAN: Your Honor, one argument is, as you will recall, in the film Your Golden Future, in that film was an individual by the name of William Musgrove who was at that time the forecast supervisor for Bell Phone. He said in that film that Mountain Bell was expecting tremendous growth on the west side and that is why we built this new switching facility on the west side.

It shows Rio Rancho Estates' knowledge that Mountain Bell engaged in forecasting and it shows that Rio Rancho knew that that was one place to go to find out what forecast was being issued.

THE COURT: You can make a better argument from that. The argument is since they use it why can't you, not that they know where to get it.

MR. KAUFMAN: I am getting to that point. If at the time they knew about Mountain Bell and they are forecasting that motion of the growth will be to the northeast, that is highly probative of their knowledge.

THE COURT: I think I would allow you to take that statement by Mr. Musgrove, I don't remember it, and put it to this witness and ask him what their forecasts were as of the time it was made to disprove the statement.

MR. KAUFMAN: I will be putting that question to Mr. Musgrove.

THE COURT: You are bringing Musgrove? What do we need this fellow for?

MR. KAUFMAN: To show Mountain Bell's projections.

THE COURT: I thought you were going to do that with Musgrove.

MR. KAUFMAN: Mr. Seay has been supervisor from '70 to '76. We are going to show through this witness from 1960 to date what the actual experience has been in terms of growth and with respect to '70 to '76 what the forecasts were.

THE COURT: I won't take forecasts. I will take actuals. I will not take this man's forecasts.

(In open court.)

XX (Government Exhibit 1504 received in evidence.)

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Seay, are two of the offices, two of the geographical offices of Mountain Bell in the Albuquerque area called the San Mateo office and the Academy office?

A That's correct.

Q Approximately where are they located geographically in the city of Albuquerque?

A San Mateo is located essentially north of the two main shopping centers, Winrock and Corronado.

Q Academy?

A In the far northeast heights area, essentially north of Arroyo del Oso Golf Course.

THE COURT: You really have to talk a little slower. It is not possible to keep up with you. Academy is in the northeast hills area?

THE WITNESS: Northeast heights north of Arroyo del Oso Golf Course.

Q What quadrant of the city are they both located in?

A Both would be in the northeast.

Q How long have those two offices been in existence?

A Academy was installed in 1974. San Mateo in 19 -- excuse me, Academy in 1973 and San Mateo in 1974.

Q What is involved in opening a new office or installing a new office?

MR. FLEMING: Objection.

THE COURT: Overruled.

A It's primarily an engineering consideration and other than from my point of view all I know is it is based on the economics. At some point it becomes more advantageous economically to provide a central office versus extending our cable plan.

Q When you say providing a central office, what physically is built when you open a new office?

A In Albuquerque it is actually a separate building that houses switch gear to serve a specified geographical area.

Q When Academy was opened and when San Mateo was opened, did they draw service away from a pre-existing switching entity?

A That's correct.

Q Which switching entity was that?

A San Mateo drew from the northeast office and the north office.

Academy drew it from the northeast office and from the north office.

Q Are you familiar with a switching facility on Coors Boulevard?

A There is one there.

Q Do you know approximately when that was built?

A That went in -- let me check -- 1962.

Q Has it been expanded since then?

A As far as the building size and the size of equipment, yes.

Q About when was that?

A I couldn't tell you.

Q Are the switching units that were built for San Mateo and Academy, are they the same type of facility as the switching entity on Coors Boulevard?

A They are not the same type of switching gear. Essentially --

MR. FLEMING: I object to that because it is a different time.

THE COURT: He doesn't know when they were started.

Q Do these switching entities serve the same function?

A Yes.

Q With respect to Government Exhibit 1504 in evidence, which is in front of you there, have you reviewed that before you testified here yesterday and today?

A That's correct.

Q That is the number of actual telephone terminals per telephone office on a yearly basis, is that correct?

A That's right.

Q That dates back to 1960, is that correct?

A That's right.

Q You testified that those reports indicate growth in all sections of Albuquerque, is that right?

A From my review I would say so.

Q What do those reports indicate in terms of which area of Albuquerque has experienced the greatest growth since 1960?

THE COURT: Over what period of time?

Q Since 1960.

THE COURT: To what?

MR. KAUFMAN: To date.

A As far as by office it would be the northeast office.

Q Is that a true statement with respect to yearly increments between 1960 and 1976?

A That's correct.

Q When you say the northeast office, as you have testified in '73 and '74 San Mateo and Academy were opened and drew service away from the northeast, is that right?

A That's correct.

Q Starting from '73 to date, since San Mateo and Academy have been opened, what section of Albuquerque has experienced the greatest growth in terms of increase of number of telephone terminals?

A It would still be the northeast office.

THE COURT: When you speak of northeast, do you mean northeast as we have been told it means, north of Central Avenue and east of the railroad tracks?

THE WITNESS: No, sir, this is a serving area that we called the northeast office which would be quite a bit less than that, probably just a rought estimate may be 50 per cent of that area, if that much.

THE COURT: Would you give us the outline? Somebody said I-25 and the railroad tracks.

THE WITNESS: I could on a map.

THE COURT: There is the map we have been using over there.

THE WITNESS: Oh boy.

THE COURT: Stand to your left, please. First find it.

Stand to your left so you are not in the way of the jury.

THE WITNESS: It is approximately something that goes out this way and down to the freeway here and then back up to including this area right here (indicating).

THE COURT: Thank you very much. Go ahead.

MR. KAUFMAN: I have no further questions, your Honor.

XXX CROSS EXAMINATION

BY MR. ARISOHN:

Q Mr. Seay, could you find for me within Government Exhibit 1504 the figures for the year 1963?

A Here.

Q This is for the year ending December, 1965?

A Right.

MR. ARISOHN: Your Honor, could we have this page separately marked?

THE COURT: No.

Q Could you also find the figures for the year ending December, 1975?

A Right here.

Q Looking at the figures for the year ending 1965, Mr. Seay, am I correct that the exchange denominated 898 Corrales is the exchange which would include the telephones at Rio Rancho?

A That's correct.

Q WNat else does the 898 exchange include?

A It includes essentially both somewhat to the west and east along Coors down to approximately the University of Albuquerque.

Q Looking at the figures for the year ending 1965, can you tell me the number of subscriber lines, the total number of subscriber lines in service for the 898 exchange, which would include Rio Rancho?

A The terminals would be 2497.

Q Showing you the figures for the year ending 1975, can you give me the number of terminals in service in the 898 exchange?

A For Corrales, at this point it also has 897 in the --

THE COURT: Wait a second. The first figure you gave us was for 898.

THE WITNESS: That's all there was at that point. By the time we get to 1975, we have another prefix to handle the telephones. If you want total Corrales office --

THE COURT: You have to add them both together?

THE WITNESS: You have to add them both together. That number is 7685.

Q Are you able to calculate for us the percentage increase in the number of in service telephone lines between 1965 and 1975 for the Corrales office?

A I am sure I could, but I haven't done it.

Q The percentage increase from 2497 terminals in 1965 to 7,685 terminals in 1975?

THE COURT: We will take your computer calculation.

Q Would you agree that is a 308 per cent increase, sir?

A That sounds about right.

Q Looking at the 1965 figures again, Mr. Seay, am I correct that the total northeast exchanges would be 298, 299 --

A Excuse me, are you in '65?

Q '65, yes, sir. The number of exchanges in the northeast in 1965.

A Right.

Q Would be exchanges 298, 299 and 296?

A That's correct.

Q Am I correct that the number of terminals in service for the 298 exchange were 8,410?

A That's correct.

Q And that for the 299 exchange were 9,085?

A That's correct.

Q And for the 296 exchange there were 757?

A That's correct.

Q For a total in service in the northeast office in 1965 of 18,252 terminals?

A That's correct.

Q Could you look at the 1975 figures?

A Okay.

Q Am I correct that the northeast exchanges at that time were 298, 299, 296 and 294?

A And also 292 and 293.

Q Okay. Would you agree with me that the number of in service terminals for the 298 exchange was 7,753?

A That's correct.

Q That the 299 exchange had 7,929?

A That's correct.

Q That the 296 exchange had 7,395?

A That's correct.

Q That the 294 exchange had 6,488?

A That's right.

Q And could you tell me how many terminals were in service on the 292 exchange?

A 2,893.

Q 293 exchange?

A 6,776.

Q So that for a total in 1975 the northeast had a total number of 39,180 --

A That would look about right without actually using a calculator.

Q Therefore, that between 1965 and 1975, the total number of in service lines in the northeast office increased from 18,252 to 39,180?

A That sounds right.

Q For a percentage of less than 308 per cent, which was the percentage in the Corrales office?

A That's right.

THE COURT: What was the percentage increase?

MR. ARISOHN: I will calculate that.

THE COURT: Mr. Arkin carried that calculator in his pocket. Let's take it out and let's use it.

MR. ARKIN: He is doing it right now, your Honor.

MR. FLEMING: Mr. Arkin doesn't know how to work it.

THE COURT: He can't add, he can't subtract, only multiply.

MR. ARKIN: Your Honor, I can't divide, that's my problem.

Q For a total increase, Mr. Seay, in the northeast section between 1965 and 1975 of 215 per cent?

A That sounds right.

MR. HOFFINGER: It is the 115 per cent without the calculator.

THE WITNESS: Okay.

Q Mr. Seay --

THE COURT: We will take the figure subject to testing your calculator during the recess.

MR. ARISOHN: Okay.

THE COURT: Let's go on to the next question.

(Continued on next page.)

b am

Q In 1965 could you tell me how many total terminals there were in Albuquerque?

A I don't know if I added them up. I would say 85,135.

THE COURT: Wait a second before we go on, when you say Albuquerque, Mr. Seay, are you referring to the city limits of Albuquerque or metropolitan Albuquerque or what?

THE WITNESS: That is one of the problems in our data, sir.

THE COURT: That is one of our problems here, too.

THE WITNESS: At the particular time in '65 the total I read off to you included Albuquerque Tijeras office which is on the far east side of the canyon.

It also included Bernalillo office which is somewhat to the north of town and also Pena Blanca which is somewhat farther north of town.

THE COURT: When you say Albuquerque, I just want it so the jury understands what is going on here, when you talk about Albuquerque, you talk about the area you service?

THE WITNESS: That is correct.

THE COURT: Which is outside, which includes the city limits and areas outside?

THE WITNESS: Even sometimes it can be somewhat less than the city limits but normally it would be outside of that. There is no way we try and serve based on city limits at all.

THE COURT: It is what you call the Albuquerque area which is the major portion of the city and other portions outside?

THE WITNESS: That is correct.

THE COURT: All right, with that in mind you can ask your questions.

Q How many in 1965, sir? How many telephones were in service in total in Albuquerque?

A Our records would indicate 85,135.

Q Could you give me that figure for 1975?

A I hope.

You would have to add 83,064 to 64,795.

Q That is the total east district plus the total west district?

A That's correct.

Q You end up with a total of 147,859?

A That sounds right.

Q For a total increase percentage between 1965 and 1975 of 175 percent?

A Okay.

Q As compared with the growth in the Corrales Heights office of 308 percent?

A That's right.

Q Is that correct?

MR. KAUFMAN: Your Honor, I disagree with the figures. Maybe we ought to have a side bar on this.

THE COURT: Let's finish with the witness and then we will correct the figures during the recess and we will tell the jury what the correct figures are.

MR. KAUFMAN: Fine.

Q Mr. Seay, whatis the base rate area?

A That is an area that we guarantee to serve one, two and four party. Within thirty days after the application of the customer versus say outside the base rate area all we have to provide is eight party service. We probably would provide something else if it was available, but Commission-wise we don't have to, if you will.

Q Is it a fact that a telephone subscriber making a telephone call outside the base rate area must pay a surcharge when he is calling within the base rate area?

A That is not correct.

Q Is there a difference between the base rate area and outside it?

A Usually there is in terms of mileage, your monthly charge and I have no idea what those costs are, but it would be so much per quarter what the same class of service would cost you inside the base rate area.

Q How does the telephone company go about determining what sections outside the existing base rate area might become added to the base rate area?

A It is essentially our definition of what is the urban part of town where there is enough density to lay the type of cable that would allow us feasibly from an economic point of view and provide one, two and four party service.

Q Isn't it a fact, Mr. Seay, that the Rio Rancho area has recently been included within the Albuquerque base rate area?

A That is correct.

MR. ARISOHN: We have no further questions.

CROSS EXAMINATION

XXX BY MR. FLEMING:

Q Mr. Seay, you gave figures for the Corrales terminal.

A Yes.

Q And also for the northeast terminal, am I correct?

A Northeast office. Terminals for both offices, Corrales office and Northeast office.

Q The Corrales terminal is up in this area somewhere, is that correct?

A That looks about right.

Q And there is a terminal in between the Corrales terminal and the center of Albuquerque, is there not, called the north terminal?

A That is right.

Q That is in here somewhere?

A Right.

Q There is also the main terminal which is in about the center of Albuquerque, is that correct?

A Right.

Q Would it be fair to say that a substantial portion of the main terminal is in the northwest quadrant of Albuquerque if we take the intersection of Central Avenue and this highway coming down here?

A There certainly is a portion of it, yes.

Q Isn't the main terminal right about in here to the west -- what road is this coming down, I have forgotten?

THE COURT: I-25.

A I-25. It doesn't go all the way to I-25. I guess you would have to be right.

Q So this is I-25 coming down here and this is Central Avenue coming down in here and we take that as the center of town, that intersection. That is old Route 66, isn't it?

A Yes.

MR. KAUFMAN: Mr. Fleming is pointing to the interstate, Central Avenue to the south of the interstate.

Q Is this Central Avenue?

MR. KAUFMAN: Yes.

Q Down here then. Is this about the center of the town where this big interchange is here between Route 66 and the interstate I-25?

A It is somewhat the center if you are going to talk about quadrants, it is essentially Broadway and Central.

Q The main terminal would be to the west and northwest of the center of town?

A Yes.

Q And the north terminal would be the northwest quadrant?

A Yes, sir.

Q And then Corrales terminal is in the northwest quadrant?

A Yes, sir.

Q Did the government ask you to figure out the increase in terminals in the north terminal and in the main terminal in addition to the Corrales terminal?

A No.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

What they asked him to figure out is immaterial. They put him on the stand and they have asked him questions. You can cross examine him.

Q Has there been an increase in terminals in the north terminal?

A Yes, sir.

Q Since 1960?

A Yes, sir.

Q Could you tell me how much?

A I can give somebody some numbers to add up, if you want to.

THE COURT: Would you like to borrow a calculator?

THE WITNESS: It would be easier.

THE COURT: Give him your calculator.

THE WITNESS: You want just the increase?

MR. FLEMING: The same equivalencies. Whatever starting point you used and whatever ending point you used.

MR. KAUFMAN: Referring to Mr. Arisohn's questions, '65 to '75? I just want to make sure we have our parameters correct.

THE WITNESS: '65.

THE COURT: '65 to '75.

Q North terminal.

A It would be a growth of 1,746.

Q The main terminal?

A No, north.

Q I say that is north.

How about the main?

A Okay.

5,904.

Q Do those terminals or do those phone numbers include residential, industrial and commercial numbers?

A Yes, sir.

Q Do they include phone booths on the street?

A Yes, sir.

Q They include any telephone which is -- I am sorry -- they include any telephone installed in the area?

A That is right.

Q Whether it is installed in a home or in a commercial building or an industrial building or on the street?

A As long as the phone that has a telephone number to it. It does not include extensions.

Q In other words, by an extension you mean two telephones in the same building with the identical call-in number and extension attached to it?

A That is right.

Q Do you know what percentage -- I am sorry.

Is Winrock, the shopping center, is that located in this northeast quadrant?

A It is today, yes.

Q Coronado Shopping Center, is that there, too?

A The old part of Coronado except for Sears is in northeast. The rest of it is in San Mateo.

Q All the telephone numbers in the Winrock development would be included in the figures you have given?

A For northeast, that is right.

Q The same is true with that portion of at least Coronado which is included in the northeast?

A That's right.

Q Any industry in the northeast would be included in the figures you have given?

A That is right.

Q On a comparative basis, is the northeast toyour knowledge a more well-to-do portion of town, of the city than say the south valley?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q If an individual who owned a home in Albuquerque installed an additional telephone line, not an extension, but an additional line, would that count as two for that home?

A Yes, sir.

Q Do you have any statistics on how many residents in Albuquerque have installed additional telephore lines in their home?

A We do not record it as a separate item.

Q Is it a growing practice?

A We think it is, but we don't have any way of knowing how much.

Q Is it a growing practice particularly among thore families whose income is higher on a relative basis?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

MR. FLEMING: May I have this marked, please.

(Defendant Chester Carity and Daniel Friedman Exhibit ER marked for identification)

xxx

Q Do you recognize this document, Mr. Seay?

A I have seen documents like that.

Q Is that an official city document?

A It would appear to be.

Q To your knowledge is it an official city document?

A I have never seen that actual document as such. I have seen those numbers.

Q You have seen documents like that?

A Yes.

Q They are published monthly by the city?

A I have never seen them published by the city, we have gotten them from aids and various pieces and parts of it, but I have never seen that particular publication.

MR. FLEMING: I offer it.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

MR. FLEMING: I have nothing further.

THE COURT: You may redirect.

REDIRECT EXAMINATION

XXX BY MR. KAUFMAN:

Q Mr. Seay, Mr. Arisohn asked you about the percentage growth in various sections of Albuquerque.

How is percentage growth measured?

A It is taking what you have today or what you have at the point in time you want to and divide that into the increase over whatever period of time you want the percentage taken.

Q Are you familiar with the phrase absolute growth?

A Yes, sir.

Q What is absolute growth?

A That is just the numbers you actually grew for the same period.

Q With respect to the figures that you gave us for the Corrales office from '65 to '75, those figures were 2497 and then 7685, do you recall that?

A Right.

Q That would be an absolute growth of approximately 5200, would that be right?

A That's right.

Q The figures that you gave us for the northeast office for '65 was 18,252 and for 1975 was 39,180, do you recall that?

A Right.

Q That would be an absolute growth of just a little less than 21,000, I believe, is that right?

A It sounds right.

Q Would I be correct in saying, then, that in terms of absolute growth the growth in the northeast was four times that of the growth in the Corrales Heights office?

A That is right.

Q By the way, the number of terminals that you gave us for the northeast office in 1975 of 39,180, did that include the terminals in the San Mateo and Academy offices?

A For '75?

Q Yes.

A No.

Q How many terminals were there in the San Mateo office in 1975?

A 10,399.

Q 10,399?

A Yes, sir.

Q And in the Academy office?

A 4,026.

Q Those offices were carved out of what had originally been the northeast office?

A Portions of them, yes.

Q About how much had been carved out of the northeast office?

A The northeast office had been about 3200.

Q What does the 3200 refer to?

A Terminals, telephones. It is the number we cut from northeast to San Mateo.

Q How many were cut from the northeast to Academy?

A Approximately 1,000.

Q Just using the actual numbers that were diverted from the northeast office to San Mateo and Academy in '73 and '74, that would add an additional 4200 terminals to your total for the northeast, is that correct?

A Approximately, yes.

Q Now, there is also an office known as the east office, is that correct?

A That is correct.

Q Is that entirely east of I-25, the north-south expressway?

A I believe it is. There would be a very little bit on the other side of it if it is.

Q Let me show you Exhibit 1501 and see if that refreshes your recollection.

A Yes.

Q Entirely east of I-25?

A Yes, east of I-25 entirely.

Q What were the total number of terminals in the east office in 1975?

THE COURT: Wait, you left a factor out.

And north of Central Avenue.

Q This is the east office we are talking about.

THE COURT: I know you are talking about the east office. You have merely given the westerly boundary of the east office.

How about the southerly boundary of the east office?

THE WITNESS: It's about half and half.

THE COURT: Then your comparison doesn't hold up because part of it goes to another section of town.

MR. KAUFMAN: I am just comparing it with what is west of I-25.

THE COURT: But this witness cannot break down the lines of the east office into those that are north of Central Avenue and those that are south of Central Avenue.

Q Mr. Seay, I would assume that the total number of terminals that you have reflected for the west office and for the Corrales office would reflect business telephones that exist in those offices as well, is that correct?

A That is right.

Q And industries that exist there as well?

A That is right.

Q And shopping centers that may exist there?

A All telephones.

MR. KAUFMAN: I have no further questions, your Honor.

THE COURT: All right.

Do you mind waiting around a little while until 11:30 when we have our recess and then coming back when our jury is not here and we can do some computation which these fellows seem to have some disagreement about.

THE WITNESS: I would be glad to.

THE COURT: Thank you.

(Witness excused)

THE COURT: Next witness.

MR. KAUFMAN: The government calls Richard Musgrove.

RICHARD L. MUSGROVE, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Musgrove, where do you live?

A I live in Albuquerque, New Mexico.

Q Where in Albuquerque?

A 1804 Field Drive, Northeast.

Q How long have you lived in Albuquerque?

A Twenty-three years.

Q Are you currently employed?

A No, sir.

Q Are you retired?

A I am retired.

Q How long have you been retired?

A I retired initially in 1970 and the company asked me back for a temporary assignment and I went back and then later retired in 1972.

Q What company was that?

A Mountain Bell Telephone.

Q How long did you work for Mountain Bell Telephone up until 1970?

A Forty-one and a half years.

Q What type of work did you do for Mountain Bell during your tenure with them?

A The whole period?

Q Yes.

A My career was spent in what they call the commercial department.

This dealt with initially customer relations, business office activities, sales work and that type of thing.

My later assignment was attached to the commercial department, but it was more in the way of a statistical operation. I was charged with the business of forecasting growth probabilities in population, telephone stations, this sort of thing, throughout the state of New Mexico, assisting in budgetary matters as it pertains to customer activities, et al., and then the making and administering of rate structures and rates themselves.

Q In terms of your work with forecasting, when did you start in that sort of work?

A In about 1958 I had my first assignment in forecasting and in a more or less of a clerical capacity.

[illegible] progressed through the ranks in the thing until at the end of my career I was in charge of the forecasting program for the state of New Mexico.

Q How long were you in charge of the forecasting division?

A Well, since I went to Albuquerque in 1953 up until my retirement.

Q In 1970?

A Right.

Q And what types of things were you forecasting?

A This was to try to anticipate the needs for reinforcing central office and outside plant facilities to be able to provide telephone service on demand.

On any major job, there is a two-year drag in there. You have to plan the job about two years in advance, order the equipment and get it installed, and what you were trying to do was to have it there ready to meet the customer's demand.

Some jobs you would forecast for that two-year period two years, five years, ten, even fifteen years and beyond that point so that you had enough without having to go in there and just piecemeal once a year or something of the sort, so it was done through the process of forecasting residents' growth, business growth, probable subdivisions that might come in, expansion throughout the town.

The process was really keeping in very close contact with real estate people, business people in the community, bankers, school systems, et al., that would have some knowledge of the community and what was being planned and what might develop and how extensive it might be.

These things all went into the basics of a forecast and, of course, came out at the other end in terms of telephones and lines.

Q Did there come a time during your employment with Mountain Bell that you had business contact with representatives from Rio Rancho Estates?

A Yes, sir.

Q And about when was the first contract that you had with them?

A Well, I can't recite the year exactly. It certainly was sometime ago, and it was when they were actually planning the development.

Now, as I recall it, they had an office out there, a sales office, and maybe one or two other items out there. They had their plans and all of this and they had done a lot of surveying and so on, but as far as construction was concerned, if I recall correctly, there hadn't been any.

[illegible] in that time, in point of time, was the [illegible] facility on Coors [illegible] built at the time that you had this first contact?

A Yes, sir.

Q It had been built?

A It had -- no. Actually constructed? It had not been constructed.

Q And do you recall about when it was that that switching facility was built?

A If I remember rightly, it was 1963 or '4.

Q What was the nature of the contact that you had with Rio Rancho Estates?

A They needed some telephone facilities out to the location, initially, of course, to provide service for their sales folks and their business activities and the, of course, as the area developed to provide service for the houses and businesses that would occur.

Q Do you recall who you had discussions with at this time?

A My recollection is that it was Mr. Friedman and some other gentlemen, they were in Albuquerque, and they were having a discussion of some sort with our district manager there.

He called me to ask me to come down and talk to them because this was in my area, the planning of the facilities.

So I went down and talked to them. They told me what they were trying to do, what they planned to do, showed me maps of the areas that they were involved and so on.

The question, of course, that came up immediately was how extensive did they really believe this development was going to be, because when we put a plant into an area, again, we don't like to go in at very short intervals and reinforce that, and particularly where it is underground. If you put it in underground, if you put it in once, you can't go back and dig it up, unless it is in a conduit, so it has to be large enough, initially, to satisfy a long term need.

Because there was nothing out there, this is a very expensive piece of business to do, and the telephone --

MR. ARNIN: If your Honor please, before this conversation is continued, may we have the identity of Friedman, if it was Mr. Friedman, or anybody else in conversation, [illegible] the conversation here accurately as it has been.

THE COURT: I gather it was in the early 1960's, [illegible] the best the witness can recall.

[illegible] was fairly [illegible] would like to know the names of [illegible] these dates.

THE WITNESS: I don't remember.

As I say, as my memory serves me right, it was Mr. Friedman, some other gentlemen I don't know.

THE COURT: Do you know which Mr. Friedman?

THE WITNESS: And I wouldn't swear it was Mr. Friedman. That was the only time I ever met them, was in that discussion.

THE COURT: Do you see any of them sitting here in the courtroom?

Do you want to look around among those multitude of people sitting back there?

THE WITNESS: A handsome group.

MR. ARKIN: Would you swear to that?

THE WITNESS: The gentleman with the gray hair, would he mind standing up?

THE COURT: Is that the man you saw?

THE WITNESS: I wouldn't swear to it.

THE COURT: All right. He can't identify with whom he spoke.

MR. ARKIN: May we have the name Mr. Friedman stricken from the --

THE COURT: No, I won't strike it. It's in the testimony. He has further indicated he wasn't sure, but I will leave it there.

Q Were you informed by either of these gentlemen that you were talking to what their position with Rio Rancho was?

A Yes.

Q And what was that position?

A I'm -- I'm sure that the one was at that time president of the company. The other one I don't remember what his capacity was at all.

Yes, I would say one of them was president, whoever was president at that time.

THE COURT: President of what?

THE WITNESS: Of the AMREP.

THE COURT: Of AMREP.

Q And can you continue that conversation?

A Yes.

They had a lot of hopes, of course, for the area and their plans were rather expansive, so I wasn't arguing with the thing. The only thing I needed to get out of it was some assurance that Mountain Bell would recover their investment in some form, either in a rebate to the company or by customers that would actually be served.

The usual process in a thing of that sort is to make an arrangement with the customer that we will provide this, having first ascertained the cost of the project, and then they would pay us all or an agreed amount for the placement of that plant and then make certain refund to them as it went into use.

Just as a figure, maybe they would recover $200 for each residence or business that was hooked up on that over a period of two years. After that time, why, then the deal was off and the money that they had paid was not refundable.

They were totally in agreement with this, and we set the figure -- I don't recall what it was. It was some 35 to $40,000, if I remember rightly, which was paid, and the business went on, the plant was placed and the service was rendered when the office went in.

Q What type of physical work actually was done to extend service to the Rio Rancho property?

A There had to be a trench plowed and a cable placed in that trench and covered up.

TLen we have what we call terminals that we cut into the cable and take a certain amount of it out for use elsewhere.

This whole thing is tied into a central office for switching purposes, and when the cable is terminated, this is what we call a feeder cable, when the feeder cable terminates, it is then fanned out and distributed where it needs to go to best serve the customers.

Now, the charges that were quoted them were based only on the portion of that feeder cable that they would use. The rest of it that we put in there w re serving some areas along the route so they didn't pay for the whole thing, they just paid for their portion.

Q In other words, a feeder cable already existed in that portion of the land, is that right?

A No, we did not. We had to put it in.

(Continued on next page.)

Q Where did you have to put in the feeder cable; from where to where?

A Well, it went in from the Central Office that we built out there.

We had planned the central office. We have two or three other communities up and down there that we had to put the office in for so as to properly serve them, and this cable came out of the central office and --

Q Mr. Musgrove, let me interrupt for a second.

When you say a central office, where was that central office located?

A It's at Alameda Road, approximately.

Q Is that the facility that we were referring to a little bit earlier, the one that was built in 1963, I believe you said?

A Yes, yes, building and all, yes, sir.

Q So you had to extend a feeder cable from that facility to where?

A And it went up to Rio Rancho Estates.

There is a smaller subdivision south and east of Rio Rancho that we had to pass through and we had planned a smaller job to get up in there to take care of that one. That was already underway, not too large, but, again, it was going to develop some, which it did.

And we put the Rio Rancho Estates, revised the job and put the Rio Rancho requirement in the same job and then did it all at one time.

Q At that time, do you recall how many telephone terminals were in service in Rio Rancho?

A In Rio Rancho Estates?

Q Yes, sir.

A None.

Q Do you recall how many telephone terminals were in place or in service at the smaller subdivision south of Rio Ranch Estates?

A Oh, at that time I would doubt if there was more than ten.

Q Mr. Musgrove, did there come a time after that switching entity was constructed that you were contacted --

THE COURT: First find out when it was constructed.

Q Do you remember what year that switching entity was constructed?

THE COURT: Completed.

A And in service?

I believe 1963.

THE COURT: Go ahead.

Q Do you recall sometime after that your being contacted by representatives of Rio Rancho Estates in terms of appearing in the film?

A Yes, sir.

Q Approximately when was that?

A Let's see. This is 1976.

Oh, 1965 possibly.

Q And can you tell us what happened?

A Yes.

MR. ARKIN: May we have who contacted him?

THE COURT: The initial contact does not bother me.

What happened when they spoke to him about whatever they spoke to him about?

Was everything over the telephone or did they just arrange an appointment to see you?

THE WITNESS: Well, all of this second part now was all over the telephone. I didn't see anyone until I actually went out there.

THE COURT: Who called you, then?

THE WITNESS: I don't know.

They had a promitonal crew in there, film crew and somebody that was heading this up and I assume he was public relations man or something of the sort.

Of course, at the time --

THE COURT: Well --

THE WITNESS: I had his name, but I don't remember.

THE COURT: Somebody called you on the telephone?

THE WITNESS: Yes.

THE COURT: What did they say to you?

THE WITNESS: They wanted to make this film and the purpose of it was to pass the real estate laws in the states of Florida and California and there seemed to be some machinations that they had to go through, and one of these involved statements by civic leaders and supposedly people that knew as to the prospects out there so as to satisfy the real estate boards in those two states that it was a good project and open and above board, legal, et cetera.

THE COURT: This is what was told to you?

THE WITNESS: Yes, sir.

THE COURT: All right.

What did you say to them?

THE WITNESS: Well, I resisted this, because I felt that this was a project that our public relations people ought to go on, it didn't involve me.

They didn't want to do this simply because they had talked to me, the company had talked to me initially about the service out there. So they didn't want our PR people to do it, they wanted me to do it, and their basis, really, for that was they had the feeling that I was more of an authority on the growth probabilities at the Rio Rancho Estates area than a PR man might be.

So anyhow, this was a kind of running fire over the telephone for probably a month or thereabouts, and I holding off and they insisting.

Finally, one Saturday when I was home off work, they called again.

THE COURT: Do you know who called?

THE WITNESS: No. It was the same people, but I sure don't know what their names were.

THE COURT: Allr gith.

THE WITNESS: They said they were wrapping up to go home the next day and they had to have this statement from the telephone company.

They had it from the gas company, the power company, some real estate people, the governor, the secretary of state and so on; they had to have one from the telephone company or all of their work was futile.

So, okay, I gave in, and drove out there.

They offered to come get me and I said no, I'd come out there on my own, and out I went.

The filmstrip was made in front of our new Corrales office, that central switching office we were talking about, and they had a little script there for me to memoraize and then recite.

That took me three or four times to get it straight, and then I did it and they took the picture.

THE COURT: They gave you a script to read?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q Mr. Musgrove, let me show you page 12, number 76, of what has been marked as Government's Exhibit 341 for identification, and ask you to read No.76 (handing).

A Out loud or just --

Q No, no, to yourself.

(Pause)

Q Do you recognize those words?

A Yes.

Q Is that what you said from the script on the film?

A That's what I said from the script on the fil, yes, sir.

MR. KAUFMAN: The government offers No. 76

on page 12 of Exhibit 341.

MR. ARKIN: We have no objection to that.

(Government Exhibit 341 received in evidence)

xx

MR. KAUFMAN: If I may read Paragraph 76, your Honor?

THE COURT: Didn't we hear it?

MR.KAUFMAN: I'm not sure.

I doubt if everybody remembers the exact words, your Honor. It will take thirty seconds.

THE COURT: If you are going to read it now, they won't remember it tomorrow, either.

(Mr. Kaufman read from Government Exhibit 341 in evidnece to the jury)

Q Mr. Musgrove, when you arrived at the switching entity to make this film, was there anything else contained in the script that the Rio Rancho representatives wanted you to read?

A Yes.

Q What else was in the script?

A Because Albuquerque was hemmed in on three sides, the only way it could grow was west.

I objected to that, because that was not factual.

Albuquerque, in the fast growth period that it had, checkerboarded. There would be a development here in this section, and I mean actually a mile section, and the next section would be nothing, then they would move on.

This was a ploy of the real estate developers, because just all of that desert area didn't have any particular value, due as they checkerboarded this thing the value of the land in between the development, of course, went up in price. So Albuquerque was built that way.

Well, you actually could have put -- and I pointed out to them -- another Albuquerque in those blank areas that had not developed yet, so when you said that it could only go one direction, this was not right.

We felt that it would grow west. The thing that really had held the west area down was access across the river, and plans were in the mill by the city and the state to improve this access, which they have done, and at which point the west side would grow.

And that was really all I could say.

So we compromised on this statement that is in there now.

Q. Well, so you did not say that Albuquerque would only grow to the west, is that right?

A No, sir.

Q And you were involved in forecasting for Mountain Bell at that time, is that right?

A Right.

Q And was Mountain Bell forecasting growth in all sections of Albuquerque at that time?

A Yes.

Q And where was the main area that you were forecasting growth?

A Northeast by far.

Q Excuse me?

A By far to the northeast area was a heavy growing area.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: We will have a recess.

(Recess)

(In open court - jury not present)

L E M U E L   R A Y M O N D   S E A Y ,   resumed.

THE COURT: Sit down, Mr. Seay.

MR. ARISOHN: We have agreed on this, I believe.

THE COURT: Oh, you have.

MR. ARISOHN: With respect to the percentage increase in the Corrales office from 1965 to 1975, the figures were an increase in 2,497 terminals to 7,685 terminals for a percentage increase of 207.77 percent.

THE COURT: That is instead of 108.

MR. ARISOHN: Yes, your Honor.

THE COURT: 207, all right.

MR. ARISOHN: With respect to the increase in the northeast office totals, the absolute increase was 18,252 terminals to --

THE COURT: Wait, the increase was not that. They started in 1965 with 18,252. They went to what?

MR. ARISOHN: They went to 39,180 terminals for a total increase percentagewise of 114-2/3 percent.

THE COURT: Mr. Kaufman wants to add in the northeast territory, at least those portions.

MR. KAUFMAN: That would be an additional 4800 to be added, and we are doing those calculations now so we will come back to that in a minute.

MR. ARISOHN: With respect to the total Albuquerque growth, in 1965 it started with 85,135 terminals in 1965 and in 1975 there were 147,859 terminals for a total percentage increase of 73.68 percent.

With respect to the northeast office when the San Mateo office and the Academy office is added in, the percentage increase from 1965 to 1975 is 137.67 percent.

THE COURT: All right.

Now there is another one, it seems to me. I don't know why I should be helping either the government or the defendant. I don't know why they both don't go in gross. They are part of the northeast, aren't they?

MR. KAUFMAN: I am not sure.

THE COURT: San Mateo and Academy are part of the gross figures of the northeast.

MR. ARISOHN: They are in.

THE COURT: Not the percentage.

MR. ARISOHN: That is what we just did.

THE COURT: You only did those that were transferred out of the northeast, didn't you? In other words, the government's contention is that the whole northeast group, so that means you take northeast plus

Academy and San Mateo.

MR. KAUFMAN: Those were the numbers transferred.

THE COURT: That isn't your point, is it?

MR. KAUFMAN: That is correct, your Honor.

THE COURT: You want the gross ones but they are all part of the northeast. The reason I excluded Mr. Fleming is he wanted to put the east in and a lot of the east was south of Central Avenue.

That is 14,400 roughly get added into the northeast figure for '75.

(Pause)

MR. KAUFMAN: Your Honor, that figure would be 193.69 percent.

THE COURT: Okay, thank you.

MR. FLEMING: May I ask the witness a question?

THE COURT: Sure.

(Discussion held off the record)

(Witness excused)

MR. DEVORKIN: Your Honor asked the government to set forth the Rainbow Lakes items in the proof so far and I have done that in what I have called a memorandum on further Rainbow Lakes evidence. I would like to file ojw 4

that with the Court and I will serve counsel.

(Recess)

(In open court - jury present)

RICHARD L. MUSGROVE, resumed.

CROSS EXAMINATION

XX BY MR. ARKIN:

Q Mr. Musgrove, I am Stanley Arkin. I represent some of the folks from Rio Rancho.

You say that in 1965 or thereabouts you were sought out by someone because of your familiarity with probabilities of growth in the Albuquerque area.

A Yes, sir.

Q And they wanted somebody who had that kind of knowledge from the telephone company.

A Right.

Q And they preferred having somebody with that kind of knowledge to somebody who was just in the public relations section of the telephone company?

A Yes.

Q They wanted somebody of authority and not just somebody who was a PR fellow?

A So they said.

Q I take it you would agree that you are more of an authority than somebody in the PR department?

A I suppose that is true. Of course, all PR departments, they are not experts in all of the things that they propound, but they are usually briefed, given their information so that they can make an intelligent approach to something and this was what I wanted to do and they preferred not.

Q They got you?

A Yes, sir.

Q You weren't paid anything for this, were you?

A Oh, no.

Q You did this just as part of your functions as an employee of the Mountain Bell Telephone Company?

A I suppose maybe that I did it more as a friendly gesture than anything else because I wasn't required to do it. I didn't have to do it.

Q The telephone company didn't say you had to do it?

A Oh, no.

Q You did this entirely voluntarily?

A Yes, sir.

Q When you got out there that day when the script was shot or the film was shot, they gave you a script, you say?

A Yes, sir.

Q Was that written out?

A Yes.

Q You poured over it and decided what part you could accept and what part you couldn't accept?

A No, I poured over the thing. The first reading clued me as to what I could accept and what I couldn't. There was no pouring over from that. The pouring over was my inability as an actor trying to learn the thing and do it right.

Q You made your decision pretty quickly but the pouring had to do with your emoting on the film, is that right?

A Right.

Q You agreed, therefore, that Albuquerque was growing fast?

A Yes, sir.

Q And it was hemmed in on three sides?

A Yes, the three sides are a long ways from the developed area. This may have been brought out, but the mountain on the east and an Indian reservation on the south and the Sandia and Kirtland installations on the south.

Q I take it also that you believe that there is going to be tremendous growth that is coming to this side of the river meaning the west side?

A Well, no. Over a long period of time this would have been exactly true. The west side had been held up ever since Albuquerque was an Albuquerque because of access across the river. It all bottle-necked at one point and to expect any material growth in the west area you had to have better access than that and until that occurred the development would be very minor, however long that took.

The growth in any town tends to go in the direction that it has already started. This is the function of facilities of one kind or another, sewer, water, lights, gas, telephone and so on.

Q Or access, which you just mentioned?

A But even if access were equal, it still has a tendency to lean -- it seems to pick up kind of a momentum and move out [illegible].

There has to be something that actually moves it over to the other side and this could be cheaper property and the result cheaper homes. It could be a [illegible] if not enough [illegible] it up and start it going because it is already going in another direction. They don't spread out evenly from a core all over everywhere and that is the way we felt about Albuquerque, even after the access was made.

It would be slower starting than the development in the rest of the town would indicate may be it ought to be.

Q Developers might be that spark that you were talking about?

A They might be that smart?

Q That spark --

THE COURT: Spark, s-p-a-r-k.

A Yes, sir.

Q The part of the script which you disagreed with was that Albuquerque could only grow to the northwest because you say Albuquerque was checkerboarded?

A Yes, sir.

Q By checkerboarded, you mean there was development and then some vacant land and then development?

A Right.

Q Is another word for checkerboarded leapfrogging?

A Yes, sir.

Q Leapfrogging occurred throughout Albuquerque in the year 1965?

A Yes.

Q Are you familiar with other cities in the southwest?

A Yes.

Q I take it leapfrogging also takes place there.

A In some places it does and it could, but most cities when they see this happening create some ordinances that stop it. They make them pay utility costs to get through their land and also make them pay a tax. It doesn't make it so desirable.

Q This particular leapfrogging still exists in Albuquerque, doesn't it?

A No, sir.

Q There is no leapfrogging?

A The results are still there in some areas, but the city has an ordinance now that makes it undesirable to try to do that any more.

Q The leapfrogging or the checkerboarded portions of Albuquerque which existed then or in other cities, I take it you attribute that, you did in your direct testimony, to real estate people who seek to cause land to rise in the checkerboarded areas?

A [illegible] the primary [illegible], yes.

Q The gain if you have vacant land near developed land, that increases the value of the vacant land?

A Yes, sir.

Q You consider that the most significant reason for checkerboarding phenomenon to have occurred?

A Frankly I can see no other reason. I could't qualify myself as an expert on real estate development, but I cannot seeany other reason for it.

Q Other than real estate people seeing to it that that happened, is that correct?

A Yes, sir.

Q Just one last question.

Have you ever seen the film which you appeared in?

A No, sir, I have not.

THE COURT: You should have been here five weeks ago. We have seen it.

THE WITNESS: I thought I was going to be, but it didn't work out.

Q Nonetheless, with the balance of the script which you finally did come to speak, you elt comfortable saying that when you said it?

A Yes, I thought it was hedging a little bit. I assumed that it was going to be used as a promotional gimmick all right and I had no desire to throw a curve at

AMREP. I thought they were a reputable outfit and I couldn't say what they wanted me to say so I guess I was willing to hedge it a little bit, so, yes, I would stand behind that statement.

MR. ARKIN: Okay.

end t

XXX

CROSS EXAMINATION

BY MR. FLEMING:

Q When they showed you the script, Mr. Musgrove, you said that you could not say that the only direction of growth would be to the northwest, did they tell you to go home?

A No, sir.

Q They said what could you say, is that right?

A No, I don't remember that. I suppose they asked me what did I believe, why did I take exception to that.

Q You took out what you -- you took what you disagreed with out of the script they had prepared, isn't that right?

A The wording they had, yes, that's true.

Q You edited the script?

A No, I guess I wouldn't agree with that. Maybe it was a composite effort, I don't know.

Q But there was eliminated from the script what you told them you did not want to say, isn't that right?

A Yes.

Q They did not tell you to go home?

A No, sir.

Q They filmed you on -- they took the film of you saying what you said you were willing to say?

A Yes.

Q Isn't that right?

A Yes.

Q What you said was, "I am Dick Musgrove, forecast supervisor for the Mountain States Telephone Company, Albuquerque is growing fast, but it is hemmed in on three sides so we built this new exchange building two miles from the Rio Rancho Estates to take care of the tremendous growth that is coming this side of the river."

Is that correct? That is what you said?

A Right.

MR. FLEMING: Okay.

MR. KAUFMAN: No redirect, Your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KAUFMAN: Peter Olguin.

PETER OLGUIN, called as a witness by the Government, having been first duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Olguin, try to keep your voice up so we can hear you back here.

A All right.

Q Where do you live, Mr. Olguin?

A My residence? That's in Albuquerque, New Mexico at 625 Georgia Southeast.

Q How long have you lived in Albuquerque?

A Approximately 25 years.

Q Are you an original native of New Mexico?

A Yes.

Q What is your education background?

A I have two years of college.

Q How old are you?

A 52.

Q In what business are you now currently engaged?

A I am in the real estate business. I am a real estate broker.

Q Do you have your own real estate brokerage?

A Yes.

Q In Albuquerque?

A Yes.

Q How long have you had your own real estate brokerage?

A Approximately three years.

Q Prior to having your own real estate brokerage, what did you do for a living?

A I worked for other real estate agencies in the city of Albuquerque.

Q How long had you done that?

A Well, a total number of seven years.

Q What type of real estate do you handle with your own brokerage?

A Mostly we specialize in vacant land and commercial businesses.

Q Do you list properties that are listed with you by people who want to sell their land?

A That's right.

Q Do you engage in any real estate transactions for yourself as principal?

A Yes.

Q As part of your brokerage business?

A Well, if the occasion or if the property looks good to be turned over, then we do.

Q Does this account for a significant portion of your business?

A [illegible] understand that.

Q Percentage-wise, do the real estate transactions that involve yourself as a principal account for a significa portion of your overall business?

A Oh, no.

Q In other words, am I correct that most of your business is listing properties listed with you by people looking to sell their land?

A Right.

Q Is your brokerage a member of the Albuquerque Multiple Listing Service?

A No, I am not. I am an independent broker.

Q During the time that you have had your own brokerage, have you had any listings for land at Rio Rancho Estates?

A Yes.

Q How many listings?

A Approximately four.

Q Have you effected any sales with respect to those four listings?

A None.

Q Did there come a time in 1975 when you became involved in an auction in Albuquerque?

A I didn't understand the question.

Q Did there come a time in 1975 when you became involved in an auction of land in the Albuquerque area?

A Yes.

Q What land was being auctioned?

A The auction took parcels in Rio Rancho Estates and also in part of Horizon property which is located west of the city of Belen.

Q Approximately when was this auction; do you recall?

A It was in August of 1975.

Q Can you tell us the circumstances of how you became involved in this auction?

A Yes. I was recommended as a cooperating broker in the state of New Mexico for Rocky Mountain Land Auction Company out of Denver, Colorado.

Q What was Rocky Mountain Land Company?

A What is --

Q What was Rocky Mountain Land Company?

A It was a Denver company that had accumulated the names of Rio Rancho and Horizon property owners and they made contact with these owners for the resale of their property at both Rio Rancho Estates and also at the Horizon Property Estates.

Q Was the Rocky Mountain Land Company the organization that was conducting the auction or organizing the auction?

A Yes.

Q What was it that Rocky Mountain Land Company came to you, what was your function with respect to this auction?

A They came to me mainly because they were not qualified brokers in the real estate business in the state of New Mexico. In order for them to conduct the auction, they had to have a cooperating broker that was already licensed in the state of New Mexico to handle any transactions that took place during the auction.

MR. KAUFMAN: May this be marked 800-A.

XXX (Government Exhibit 800-A marked for identification.)

Q I show you what have been marked Government Exhibit 800-A for identification and ask if you can identify them.

A Yes, these were the -- this was the property listed by Rocky Mountain Land Auction Company to be auctioned at Albuquerque, New Mexico.

MR. KAUFMAN: The government offers 800 and 800-A.

MR. ARKIN: Your Honor, subject only to the objections we made pretrial, we have no further objections.

THE COURT: Objection overruled.

XXX (Government Exhibits 800 and 800-A received in evidence.)

Q Mr. Olquin, do you have your own copies of these documents?

A Yes, I do.

Q Do you have them with you?

A Not with me, no.

Q Where are they?

A They are in my briefcase in your office.

Q In my office?

A Yes.

Q Mr. Olquin, referring to Exhibits 800 and 800-A, the first column here lists -- is under the heading "item." Then comes "unit, block and lot."

Can you tell us what these columns refer to?

A This is the description of the particular lot on say item 1 or item 2 and so on and it lists the unit at Rio Rancho Estates. It lists at the block in which this particular lot is located and then they were broken into several units. I think they went from unit 1 through unit 26 or 27 and within each unit they were cut up into blocks and then the blocks were cut into individual lots and that's what this signifies.

Q Each item under the heading of "item" refers to particular parcel or parcels of land for sale at the auction, is that correct?

A That's correct.

Q With respect to each item, am I correct in saying that that refers to either one lot of in some cases more than one lot?

A Yes.

Q How many total items of Rio Rancho land were up for bids at the auction?

A It was in the neighborhood of --

Q I am asking you items, not lots. You finish your answer, go ahead.

A These lists show total items of 1373 items plus some additional items of about 56, which would be -- there are 79 additional items, which would be 1459 items.

Q It's 1373 plus the additional 79, is that right?

A Yes.

MR. KAUFMAN: I believe that would be 1452.

Q A total of 1452 items?

A Right.

(Continued on next page.)

Q Did I previously ask you to go through these lists and calculate the total number of lots that were available for sale in these 1452 items?

A Yes.

THE COURT: Is it true these include Horizon, too?

THE WITNESS: What's that, your Honor?

THE COURT: I am asking Mr. Kaufman.

MR. KAUFMAN: I hadn't thought so, your Honor, but let's verify it with the witness.

THE COURT: He just said he was asked to sell Rio Rancho and Horizon.

Q Does this list include Rio Rancho land and Horizon land?

A No. That's all Rio Rancho land.

Q This is just Rio Rancho?

A Yes.

Q Did I ask you to compute the total number of lots that were available for sale within these 1452 items?

A Yes.

Q And have you done that?

A No, I haven't.

Q You did not compute the number of lots?

A Do you mean adding up each individual lot?

I had a total, but I don't recall what it was.

I think it was 2500 and some.

Q Is that total on the papers that are in my office?

A Yes.

MR. KAUFMAN: Your Honor, I believe the rest of this witness' testimony would require the papers that are in my office.

I can send somebody over now and we can wait for five or ten minutes or maybe we can take an early lunch break.

THE COURT: Let's have lunch early today.

See you at a quarter to two.

(Luncheon recess)

AFTERNOON SESSION

1:45 p.m.

(In open court in the absence of the jury.)

THE COURT: Yes?

MR. [illegible]: Your Honor, the government has an application.

Given the proof that has come in to date, we are at a point where we believe that if we have an opportunity to go back and check the evidence that has come in, we will be in a position to eliminate a good deal of additional testimony and documents which we expected to have to offer at the trial.

However, we thought that we would reach this point during the Christmas recess and we would be able to have that time to go back and check the record and be sure that we had in what we thought we needed and could eliminate what we believed we didn't need in the nature of testimony and documentary evidence.

[illegible] schedule and the witnesses that we have scheduled within the next ten days, we are ahead of [illegible] because we [illegible] position [illegible] need [illegible] witnesses.

A lot of these witnesses are out of town witnesses which would be extremely inconvenient to start calling them in and mak the determination that, in fact, after having dragged them across country, we don't need their testimony.

Quite frankly, your Honor, the situation is that because we have been preparing the witnesses, putting them on the stand, we have not had the time to go back and make that kind of evaluation that is necessary for us to determine which witnesses we can eliminate and what testimony we can eliminate.

Our application, therefore, is for your Honor to give us a recess of 48 hours so we can make that determination.

We believe that if we have that time, we can substantially cut down on both additional testimony and additional documents. We may be in a position to rest next week, given the schedule that your Honor has set sitting through, I think, next Wednesday, and if not then certainly we believe that we would be in a position to rest by the following week, and we believe that that 48-hour period will enable us to really reduce the remaining evidence and proof that the government would seek to offer and in the long run shorten the trial considerably.

THE COURT: Any objection from the defendants?

MR. ARKIN: No.

MR. FLEMING: I don't know what 48 hours they are talking about.

MS. HYNES: The next two days is basically what I am talking about, your Honor.

THE COURT: Tomorrow and Thursday?

MS. HYNES: Yes.

THE COURT: Any objection, Mr. Lavinsky?

MR. LAVINSKY: No objection, your Honor.

THE COURT: Mr. Hoffinger?

MR. HOFFINGER: No objection.

MR. FLEMING: I think it would be preferable to sit tomorrow and recess for the weekend.

THE COURT: They say they are at a point now where they have to do it now, otherwise they will be bringing people in whom they may not want to bring in.

MR. FLEMING: If what Ms. Hynes says is the next 48 hours it is what time she needs --

THE COURT: That's what she says.

MS. HYNES: What we can do, it is always hard to judge where you are going to end the testimony.

We can probably sit for a half a day tomorrow. [illegible] that we don't think we will complete even today and we could go on tomorrow and there are other standby witnesses that will probably take up half a day tomorrow and then we could adjourn --

THE COURT: For the rest of the week?

MS. HYNES: To the weekend. That would certainly give us the time that we need and I think we would be in a better position Monday morning to come back and advise your Honor and tell you where we stand as far as resting.

THE COURT: All right.

Bring the jury in.

(Jury present.)

PETER OLGUIN, resumed.

THE COURT: You may proceed, Mr. Kaufman.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Olguin, do you have your copies of 800 and 801?

A Yes, I do.

THE COURT: I thought it was 800 and 800-A.

MR. KAUFMAN: I'm sorry, it is 800-A. I'm sorry.

Q And do you have the arithmetic there on how many lots are included in the total number of 1452 items?

A Yes. There are 2156 total lots.

Q When these lots were listed for sale at the auction, were minimum prices listed for each lot?

A As far as I know, yes. However, I never did see any of the actual listings that Rocky Mountain Land Auction Company took.

Q Can you tell us --

THE COURT: Wait.

I don't understand that.

You didn't see listings that Rocky Mountain took. I don't know what you mean by that.

You conducted the auction, right?

THE WITNESS: No, sir. No, your Honor.

THE COURT: You did not conduct the auction?

THE WITNESS: No, your Honor, no.

THE COURT: What is he going to testify to?

Q Mr. Olquin, your involvement in the auction was that you were the broker to handle any transactions that came out of the auction, is that right?

A That is true.

Q In other words, if somebody made a bid on a piece of land and that bid was accepted, you were the licensed real estate broker to close that deal; is that correct?

A That's true.

THE COURT: And that is all he knows.

MR. KAUFMAN: That's correct, your Honor.

THE COURT: How does he know about upset prices or anything?

He can't testify yes or no.

MR. KAUFMAN: I was just asking if he knew whether or not there were minimum prices listed, your Honor.

THE COURT: You did not know that answer before you put the question?

You prepared the witness, didn't you?

MR. KAUFMAN: Yes, your Honor.

THE COURT: Get down to what he knows.

MR. ARKIN: Your Honor, in view of this, might we move to strike those two exhibits, because he didn't conduct the auction.

THE COURT: No, I will let them in.

Technically, you are right, but I am overruling you.

MR. ARKIN: That is a non-technical ruling.

MR. FLEMING: You have that right, your Honor.

THE COURT: Do you concur in the ruling or do you join in Mr. Arkin's objection?

MR. FLEMING: No. I recognize your Honor's right to overrule the objection.

MR. ARKIN: We know who runs the court.

THE COURT: Go ahead.

Q Mr. Olguin, how many sales were made at that auction?

A There was a total of thirty-eight sales.

MR. FLEMING: To his knowledge.

THE COURT: To his knowledge.

Were you there?

THE WITNESS: Yes, your Honor.

THE COURT: You were present when the auction was being run?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Q How many sales were closed at that auction?

A Thirty-eight.

Q When you say thirty-eight, are you referring to items or total number of lots?

A Just items; thirty-eight items.

Q And how many lots were included within those thirty-eight items?

A There was a total of forty-five lots.

Q Were all those bids finally accepted by the person whose land was listed?

A No.

Q How many of those bids were accepted by the person who listed the land?

A After the purchase agreement was sent to the sellers, a total of twenty-seven were accepted and sold.

Q Mr. Olguin, why don't you tell us what the procedure was with respect to communicating with the person who is listing the land in terms of whether or not the sale would actually be closed?

A When the bid was taken by the auctioneer and that was the final bid, then that person was sent over to me as the broker and I wrote up a purchase agreement between the buyer and seller, and I sent a transmittal letter with the purchase agreement to the seller and if he accepted the price on the purchase agreement then the seller would sign the purchase agreement and return it to me with all available title papers that he had in his possession and I proceed from there on to close the transaction.

Q And of the thirty-eight bids that were taken, which represented forty-five lots, how many of those were accepted by the person who had listed land?

MR. FLEMING: The witness has answered

twenty-seven.

A Twenty-seven.

Q And how many lots would that constitute?

A Let me see.

(Pause)

A total of thirty-three lots.

Q Thirty-two lots?

A Yes.

THE COURT: Thirty-two?

THE WITNESS: Thirty-three.

THE COURT: Thirty-three he said.

Q Of those thirty-three lots that were sold, what was the highest price paid for any of those thirty-three lots?

A $900 for a half acre lot was the highest price paid.

Q And what was approximately the average price paid for those thirty-three lots?

A The average price was $500.

Q [illegible] Exhibit 801[illegible] for identification, and ask if you can identify that (handing).

A Yes, that is the purchase statement prepared

Q Does your signature appear on there?

A Yes.

Q Do you recognize this card on top?

A Yes.

Q What is that card on top?

A That's one of the listings taken by Rocky Mountain Land Auction Company.

MR. KAUFMAN: The government offers 801-K.

MR. ARKIN: A brief voir dire.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Olguin, do you know whose handwriting it is which appears on 801-K?

A No, I don't.

MR. ARKIN: We have no objection.

(Government Exhibit 801-K received in evidence)

BY MR. KAUFMAN:

Q Mr. Olguin, I also show you 801-G for identification and ask if you can identify that.

THE COURT: Does he have to read them all?

MR. KAUFMAN: These are the only two, your Honor.

THE COURT: All right.

A No.

Q Is that your signature there?

A Yes, that is my signature.

Q Is this card on top the same type of listing card that was on 801-K?

[illegible]

MR. KAUFMAN: The government offers 801-G.

MR. ARKIN: No problems. No objection.

(Government Exhibit 801-C received in evidence) xxx

Q Mr. Olguin, would I be correct in saying that there were purchase agreements which would reflect the other lots that were sold as well similar to 801-C and K?

A I didn't understand the question.

Q Would there be a purchase agreement reflecting the sales of the other lots as there are for the lots contained in 801-C and 801-K?

A Yes.

Q Was there one particular purchaser of these thirty-three lots in terms -- withdrawn.

Did one particular buyer buy a majority of these thirty-three lots that were sold at the auction?

A Yes.

Q Who was that buyer?

A Sunland Realty, Inc.

Q Sunland Realty?

A Yes.

THE COURT: How many did they buy?

There were twenty-seven completed, how many went to Sunland Realty?

THE WITNESS: Twenty-one, your Honor.

THE COURT: Thank you.

Q Those were twenty-one items, Mr. Olquin?

A Twenty-one items.

Q How many lots did that constitute?

A Twenty-five.

Q Did another realty or development or building company buy any of the other lots?

A There was one other contractor that bought two lots.

Q What contractor was that?

A It was a contractor building at Rio Rancho Estates.

Q What was the name of the contractor?

A Villa Corporation.

Q Did any individuals buy any of these thirty-three lots?

A Yes.

Q How many individuals?

A Four individuals.

Q Those thirty-three lots that were sold constitute the total sold out of the 2,156?

A Yes.

[illegible]: No further questions, your Honor.

CROSS EXAMINATION

XX

BY MR. ARKIN:

Q Mr. Olguin, you are an independent broker, is that correct?

A Yes.

Q That is, you do not participate in the Albuquerque multi listing service?

A Correct.

Q Do you know how many brokers there are, real estate brokers there are in Albuquerque?

A No, sir, not at this time. I would say approximately 1800 brokers.

Q Of those 1800 or approximately 1800 brokers, do you know how many of them are independent such as you?

A There are about I would say 300 independent brokers. There are many brokers that work for other agencies. They are associated brokers within an agency.

THE COURT: When you say brokers, you mean people who are licensed to be brokers?

THE WITNESS: Licensed brokers, yes, sir.

THE COURT: There are 1800 licensed brokers and 300 acting independent.

Q And therefore do not participate in the multi listing service?

A That is right.

Q When you listed the -- excuse me, strike that.

You say that you listed some time -- well, you say you listed four properties for sale at Rio Rancho, is that correct?

A That is correct.

Q When was this listing?

A One was listed in April of 1976, that is, one client had two half acre lots for sale. That was one of them.

Q And the other lots?

A That was two of them. Then two other lots from a couple that lived in Detroit, Michigan when I worked for another agency. Those were listed by myself.

Q When was that, that is the question, when?

A That was approximately three years ago.

Q With respect to the lots that you listed in this year, April of 1976, at what price were they listed?

A Those were listed at $2500 a piece.

Q And the lots which you listed three years ago you say?

A I didn't understand?

Q How much were the lots listed for three years ago, that you say were listed then?

A Those were listed for $3500 a piece.

Q Going to the auction, how was it that you came to be broker for the auction?

A I was contacted by Mr. Mel Kupitz who was the owner of Rocky Mountain Land Auction Company and he got my name from an employee of his.

Q Did you enter into an agreement with Mr. Kuptiz from the Rocky Mountain Auction Corporation?

A I did not know him before.

Q Did you enter into an agreement with him with respect to the auction?

A Yes.

Q Did that agreement provide that you receive a certain commission upon the sale of land?

A No.

Q Did you receive a salary?

A No.

Q How were you compensated?

A Well, I was compensated on half of the commission that was paid out of the sale of any lots that were sold at auction.

Q Do you know that the Rocky Mountain Company charged a listing fee for this auction?

A Yes.

Q. Do you know how much that was?

A. Yes.

MR. [illegible]: Objection, your Honor.

THE COURT: Overruled.

Q. How much was it?

A. It was [illegible] her side.

Q. Did you get any piece of them?

A. [illegible].

Q. Do you know how Rocky Mountain -- is it Rocky Mountain Auction Company or Land Company?

A. Rocky Mountain Land Auction Company.

Q. Rocky Mountain Land Auction Company.

Do you know how they got the names of the [illegible] -- do you know whether they solicited people to sell their land or whether people came to them of their own accord?

A. I don't know how they got their listing of names.

Q. [illegible] know how they got the names?

A. [illegible].

Q. [illegible] know how they got the land to [illegible]

A No.

Q Do you know what an upset price is?

A Pardon?

THE COURT: Do you know what an upset price is?

THE WITNESS: No.

THE COURT: Do you know what a minimum price is?

THE WITNESS: I do know what a minimum price is.

THE COURT: Is it agreed that a minimum price and an upset price are the same?

MR. ARKIN: Yes, your Honor.

MR. KAUFMAN: Yes, we would agree.

Q You don't know what any of the minimum prices were?

A No, I don't.

Q Do you know that at the auction which was conducted that they sold or attempted to sell first those lots with the least upset prices?

A I would say so, yes.

Q They picked out the cheaper lots first, isn't that correct?

A That is the way I understood it.

Q Of the bids which were received for forty-five lots, a certain number of people did not accept those bids, isn't that so?

A True.

Q Those were people who were not satisfied with the price received at the auction?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

Q Isn't that true to your knowledge?

A Well, I wasn't concerned with what the prices were --

THE COURT: Wait. You are the gentleman who prepared the purchase agreement for lots that were sold?

THE WITNESS: That is right, your Honor.

THE COURT: You sent those purchase agreements tothe owners?

THE WITNESS: That is correct, your Honor.

THE COURT: You received twenty-seven back?

THE WITNESS: Right.

THE COURT: Thirty-three lots?

THE WITNESS: That's right.

THE COURT: Were you ever told by the remaining eleven sales why they wouldn't go through with it?

THE WITNESS: No, I never got any word back from them.

THE COURT: They just didn't respond.

THE WITNESS: They just didn't respond to the offer.

THE COURT: All right.

Q You testified that the average price at which the contracts you prepared -- strike that.

You said that the average price of the sale of the contracts you prepared was $500.

A That is right. This is based on the purchase agreements that I wrote up, it was an average of $500.

Q An average of all the prices was $500?

A That's right.

Q How many of the lots sold for more than $500?

A There were not too many. I can take a count on those. There was twelve lots total that sold for more than $500.

Q Twelve out of the thirty-five?

A That is right. Twelve out of thirty-three.

Q How many were sold for less than $500?

A None.

Q Well, now you said the average price was $500 and twelve lots of the thirty-three sold for more than $500, am I correct?

A Right.

Q So if twelve of the thirty-three sold for more than 500 and none sold for less than $500, how do you arrive at $500 being the average price?

A Because the majority of the lots sold for 500.

Q I see.

A I just -- I didn't break it down into the layt dollar, no.

Q You would agree that the average was more than $500 then, wouldn't you?

A Yes.

Q It would have to be. Am I right?

A That's right.

Q How many bidders were there at the auction?

A The first day there were about, oh, I would say in the neighborhood of fifty.

The second day there was an average of about, oh, forty-five.

Q From your own knowledge, were most of these people contractors or builders from the Albuquerque area?

A Well, I know of two of them that were builders.

Q You are talking about Sunland and Villa, isn't that so?

A Right.

Q You don't know about the others who were there?

A No.

Q By the way, at the time this auction took place, do you recall seeing anything in the Albuquerque newspapers or elsewhere that Rio Rancho was being investigated?

A No, sir.

Q You don't recall seeing anything in the paper about an investigation involving Rio Rancho?

A No.

Q You don't know whether other people in Albuquerque knew about an investigation of Rio Rancho?

MR. KAUFMAN: Objection, your Honor.

A No.

MR. KAUFMAN: What other people in Albuquerque knew?

THE COURT: The witness answered no, he doesn't know.

Q As a realtor, a broker, I take it you would agree that selling land in auction is a distress way of selling it?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q That is not the place to get the best price, do you agree with that?

A I agree with it, but I didn't ha[illegible] no --

Q Yes or no?

A I had no control over it.

Q I am not saying you did. You are not on trial.

THE COURT: Nobody is charging you with anything. We just want to get the facts from you.

THE WITNESS: I understand, sir.

MR. ARKIN: Okay.

Q You said that most of the lots were bought by Sunland Realty?

A That's correct.

Q Who is Sunland Realty?

A Sunland Realty has a construction subsidiary to their real estate function also.

Q They build homes?

A Yes, at Rio Rancho Estates.

Q Do you know how long they have been in business?

A I would say approximately three years, the construction end of it.

Q Do you know people who work for Sunland?

A I know the qualifying broker for Sunland Realty.

Q Is he somebody who has been around Albuquerque for a substantial period of time?

A Yes.

Q Who is the qualifying broker?

A His name is James Bradley.

THE COURT: What is meant by qualifying broker?

MR. ARKIN: I was going to get to that.

Q What is meant by qualifying broker?

A The qualifying broker is the man in charge of the brokerage -- of the realty firm, the man that passes on all real estate transactions for the realty firm.

Q Do you know how long Mr. Bradley has been living or working in Albuquerque?

A No.

Q Do you know he has been there for a substantial number of years?

A I am sure he has.

Q Do you know he has been building homes in Rio Rancho?

A I know he is building there now.

Q And that he builds on speculation and sells?

MR. KAUFMAN: Objection, your Honor.

THE COURT: He can ask him if he knows.

A I am sure he is.

THE COURT: If he builds without a purchaser, you are building on speculation, aren't you?

MR. KAUFMAN: Your Honor, I am just objecting on the basis of this witness' knowledge.

THE COURT: He was born there and he has been in Albuquerque and he has been in this business practically all of his life.

Q At the auction, do you recall whether people were told about the exchange privilege at Rio Rancho Estates?

A No.

Q You don't recall that?

A No.

Q You do know that Mr. Bradley of Sunland Realty was able to tkae the lots which they bought at the auction for [illegible]00 or $600 or whatever it was and exchange those lots into the developed area at Rio Rancho, you know that, don't you?

A Yes.

Q That was also true of the Villa lots, is that so?

A Correct.

Q They bought these lots for five, six or $700 or whatever it is and they traded them in for lots in the developed area, isn't that right?

A Right.

Q Which they intended to use to build homes for speculation, right?

A Right.

Q You know that lots in the developed area of Rio Rancho are worth a lot more than five or $600, don't you?

A Yes.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

Q That answer was what?

A Yes.

Q You are familiar, being a broker, with the value of land on the west side, particularly the northwest portion of the west side, aren't you?

A Yes.

Q You know that in Rio -- do you know where the Corrales area is?

A Yes.

Q Corrales is right next to Rio Rancho?

A Right.

Q It abuts the Rio Rancho property?

MR. KAUFMAN: Your Honor, I object to this as way beyond direct examination.

THE COURT: Overruled.

Do you want him to make the witness his own?

MR. KAUFMAN: If he wants to make him his own witness?

THE COURT: Your witness, Mr. Arkin.

MR. ARKIN: I will change my style.

Q Do you know where Corrales is, sir?

A Yes.

Q Where is Corrales in relation to Rio Rancho?

A Corrales is along the riverbed below the Rio Rancho Estates.

Q How far is Corrales from the perimeters or border of Rio Rancho Estates?

A I would say approximately two to three miles.

Q In the same given area of the northwest part of the west mesa?

A No, it is not on a mesa. That's why I say it is along the riverbed.

Q Is it below the mesa?

A Yes.

Q Are you aware of any particular land transactions in the Corrales area within the last two years?

A No.

Q Are you aware of the prices at which land is selling in [illegible]rrales area within the last two years?

A Yes.

Q What would have been the approximate price, asking or market price, for a one half acre lot without utilities in the Corrales area in 1974?

A Approximately $500, I mean $5,000.

Q Put the other zero on.

A $5,000.

Q Now, in 1976, what would be the asking or going price for that same lot two years later?

A Approximately $6500.

Q Is that because of the additional development in the Corrales area?

A Not necessarily. It hasn't developed any more than it has in the past decade. However, it is irrigated suburban property.

Q Have land values been going up in the Corrales area steadily over the years, to your knowledge?

A Yes.

Q Do you believe that development as a realtor near property increases the value of undeveloped property?

A How is that again, sir?

Q Do you believe that undeveloped property --

THE COURT: You have that in the record through the prior witness.

MR. ARKIN: All right, your Honor.

THE COURT: I think that is enough of this. Let's get back to cross examination.

MR. ARKIN: Your Honor, may I ask one more question in my capacity as a direct examiner?

THE COURT: Go ahead.

MR. ARKIN: Then I will sit down.

Two more questions.

Q Over the years as a realtor, Mr. Olguin, have you read the want ads in the Albuquerque Journal and other newspapers for real estate?

A Yes.

Q Over the years can you tell us or approximate the number of ads you have seen in the Albuquerque Journal or other local newspapers for Rio Rancho land?

A Very few.

MR. ARKIN: I have no further questions.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Olguin, is that correct?

A Olguin.

Q My name is Fleming. I represent some of the defendants.

Now, am I correct that no land could be auctioned without the permission of the owner of the land?

A That's right.

Q As a matter of fact, to your knowledge, Rocky Mountain Land Auction Company did solicit Rio Rancho land owenrs to place their land up for auction, did they not?

MR. KAUFMAN: Objection, your Honor. The witness already said he had no idea --

THE COURT: That's what he said, Mr. Fleming.

Do you want the question put again?

MR. FLEMING: Yes, sir.

THE COURT: Go ahead.

MR. FLEMING: Mr. Reporter, could you read it?

(Record read.)

THE COURT: Did you hear that?

THE WITNESS: Yes.

THE COURT: What is the answer?

THE WITNESS: Yes, they listed the property for auction, for sale at auction.

THE COURT: What?

THE WITNESS: Rocky Mountain Land Auction Company listed the property from the people --

THE COURT: That isn't the question.

How did Rocky Mountain get the land to be auctioned?

THE WITNESS: I do not know.

THE COURT: Same answer he gave before. He doesn't know how they got it.

MR. FLEMING: Do you have Exhibit 136? I will mark this.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit ES marked for identification.)

Q I show you what has been marked ES for identification. Would you look at it and tell me if you have ever seen it or a copy of it before?

A I have not seen this before.

Q Who at Rocky Mountain Land Auction Company hired you or engaged you or retained you as their broker?

A It was agreement between myself as a cooperating broker with the Rocky Mountain Land Auction Company.

Q Who was the cooperating broker?

A He cooperates as a licensed broker for the state of New Mexico.

Q Who was he?

A I was the cooperating broker.

Q You were the cooperating broker and you made an agreement with Rocky Mountain?

A Right.

Q Did you speak to a person employed by or running Rocky Mountain?

A No.

Q How did you reac the agreement, in what fashion?

A The agreement -- I have a copy of it here if you would like to see it.

Q How did it come about? Tell me how you came to enter into this agreement, what steps took place?

A I was recommended to Mr. Mel Kupitz --

Q Mel Kupitz?

A He is the owner of Rocky Mountain Land Auction Company.

Q Who recommended you to Mel Kupitz?

A I can't recall his name, but he was an employee of Mel Kupitz at Rocky Mountain Land Auction Company. He was a friend of mine.

Q He was a friend of yours?

A He recommended me to be the cooperating broker for him during the auction sales.

Q He was a friend of yours. He was a friend of yours before he made the recommendation, is that right?

A Right.

Q What was his name?

A I can't recall his name at this time.

Q All right.

Did Mr. Kupitz, if that's his name, of Rocky Mountain, did he speak to you?

A Yes.

Q On the telephone?

A Tellephone and by mail.

Q Did he also speak to you in person in Albuquerque?

A Yes, he did.

Q All right.

Did he tell you how he was going to go about getting Rio Rancho property for auction?

A No.

Q Did you ask him?

A No.

Q Did you have any discussion with Mr. Kupitz about the way he was going to organize his auction?

A No.

Q Did you have any discussion with your friend at Rocky Mountain as to how this auction was to be organized?

A No.

Q How many items did you testify were listed for auction?

A I --

Q My notes say 1400. I don't know if that's correct.

A There were 1,352 items.

Q And did that represent 1,000 --

MR. KAUFMAN: Your Honor, I believe it is 1,452.

THE COURT: Wait a second.

MR. KAUFMAN: Your H onor, I believe it is 1,452.

MR. FLEMING: I had 1400 written down, so that is probably correct.

THE COURT: 1,452.

Q 1,452 items, is that correct?

A Right, sir.

Q And to your knowledge, did that represent 1,452 owners?

To your knowledge, did that represent 1,452 actual owners of Rio Rancho property?

A Yes.

Q All right.

Do you have any idea how many people owned Rio Rancho property?

A No.

Q Did you know that 1452 owenrs comprised less than 3 per cent of the people who owned Rio Rancho property?

A I don't know that.

Q The 1452 owners or items comprised 2156, one half acre lots, is that correct?

A Right.

Q And am I correct that as of the date of the auction, Rio Rancho had sold at least 76,916, one half acre lots?

A I didn't know that.

Q Did you know that the total number of lots placed for auction by their owners comprised less than 3 per cent --

MR. KAUFMAN: Objection, your honor. Mr. Fleming --

THE COURT: You are assuming a fact that is not in evidence.

MR. FLEMING: Well, I am, but that has been done, if your Honor please.

THE COURT: I will take it if you are going to connect it up on the defense.

MR. FLEMING: If we can prove it, yes, your honor. I represent we can.

THE COURT: Okay.

Q Did you know that the half acre lots which were placed for auction represented less than 3 per cent of the total lots sold by Rio Rancho?

A No, I didn't.

Q You say 38 sales were closed, is that right?

A We had a total of 38 sales.

Q 38 sales, and of that number --

A 27 --

Q -- 27 accepted the sale?

A Right.

Q Which would figure out to be a rejection rate of about 25 per cent, right?

A Right.

Q Do you recall whether those who rejected the sale were individuals or corporations?

A I didn't get that.

Q Well, certain owners whose land was -- I'm sorry, I am wrong. I take it back.

Approximately 25 per cent of the people whose land was sold rejected the sale for the price at which it was sold, is that correct?

A That's right.

MR. FLEMING: Do you have Government's Exhibit 136-G?

MR. KAUFMAN: Yes (handing).

Q I show you Government's Exhibit 136-G (handing).

That is a purchase agreement coming out of this auction, is that correct?

A Yes.

Q And the purchaser was named Henry Armijo?

A Yes.

Q And the --

MR. KAUFMAN: Objection, your Honor. He is reading from an exhibit that I don't believe is in evidence yet.

MR. FLEMING: I thought it was received.

THE COURT: Which is this?

MR. KAUFMAN: 136-G.

Has that been offered and admitted?

MR. FLEMING: I am sorry. I thought you offered it and I saw it.

MR. KAUFMAN: I offered 801-K.

I think they may be a little different if you want to compare them.

THE COURT: I don't have a 136-G.

MR. FLEMING: I am sorry, your Honor.

I don't know if there is any difference or not.

Q Is there any difference between 136-G and 801-K (handing)?

A No.

MR. FLEMING: You may as well offer it so there won't be any confusion, since I have a copy of 136-G.

That looks like a copy of it.

MR. KAUFMAN: There is a signature on 136-G that doesn't appear on here.

MR. FLEMING: I offer 136-G.

MR. KAUFMAN: No objection.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit ET received in evidence.)

Q I show you what has now been remarked as ET in evidence (handing).

That is a purchase agreement coming out of this auction purchased by a Henry Armijo, is that correct?

A That's correct.

Q Who is a resident of Albuquerque? He lives at 505 Bellamah Northwest, Albuquerque, New Mexico?

A That's correct.

Q So he was a local resident, is that correct?

A Right.

Q And he purchased it from a Samuel Kaufman, is that correct?

A That's right.

Q For $550, and it was a half an acre, is that right?

A Right.

Q You knew about the exchange privilege in connection with Rio Rancho undeveloped land, did you not?

A Yes.

Q And you knew about that before the auction, did you not?

A Right.

Q Did you fill out this purchase agreement as broker? Did you have it typed up?

A Yes.

Q Did you have it signed?

A Yes.

Q And if I could read to you, "Received of Henry Armijo, address 505 Bellamah Northwest, Albuquerque, New Mexico, phone number, the sum of $200 in the form of check, dated August 24, 1975, as deposit as part payment for the purchase of vacant land located at Rio Rancho Estates, lot 1, block 27, unit 10, Rio Rancho, New Mexico, and to include the following improvements."

And you typed in there "[illegible]," did you not?

A Right.

Q Yet you knew that half acre could be exchanged for a half acre with utilities, did you not?

A Yes.

Q Now, am I correct, did you testify in response to Mr. Arkin's question that the Rocky Mountain auctioneer did not tell the people at the auction about the exchange right?

A They did not.

Q He did not tell them that?

A He did not.

Q Did you stand up and tell him, "Tell them about the exchange right."?

A No.

Q No.

Did you testify in response to Mr. Arkin's question that the exchange right gave greater value to the raw land?

A No, I didn't do that.

Q Does the right to exchange one half acre of raw land for a half acre of or to a comparable acre with utilities increase the value of the raw land?

A No.

Q The exchange right does not increase that value, is that your testimony?

A That's what I would say, it does not.

Q It does not.

So it is your testimony on your oath that a piece of raw land which may be exchanged for land with utilities is worth no more than just a piece of raw land?

A The thing is this, that they --

Q No.

Is that your testimony?

A That's right.

Q Worth no more?

A It is not worth no more.

So that a half acre here at Rio Rancho, which can be exchanged into a developed area with utilities, is worth no more than a half acre which does not have that right attached to it somewhere else in New Mexico, is that right?

A That's right.

Q And that's the way they ran the auction, is that right?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

(Continued on next page.)

Q When did you first hear that Rio Rancho Estates was the subject of a grand jury investigation in New York?

A It was about four months ago.

Q Four months ago was September of 1976.

Would that be about right?

A Yes.

Q Do you live in Albuquerque?

A Yes.

Q Did you not read in October of 1975 that the indictment in this case had been filed in New York?

A I didn't read about it.

Q It was not in the Albuquerque -- well, I will withdraw that.

Did anybody tell you in Albuquerque that an indcitment had been filed in New York with regard to Rio Rancho back in October 1975?

A I didn't read about it.

Q Did anybody tell you about it?

A No.

Q Did you ever tell anybody that before this auction, before this auction in August of 1975, the people in the Albuquerque area knew because it had been in the newspapers and talked about that Rio Rancho was under grand jury investigation in New York? Did you ever tell anybody that?

A Not in August of 1975, no.

Q Did you ever tell anybody that prior to August 1975, you personally and other people to your knowledge in Albuquerque knew that Rio Rancho was under grand jury investigation in New York?

A I had no knowledge of it. In August of 1975, I had no knowledge that Rio Rancho Estates was being investigated.

Q And you never told anybody that you did, is that right?

A No.

Q Isn't it correct, Mr. Olguin, that certain records in your possession were subpoenaed to the grand jury here in New York in September of 1975?

A Yes.

Q Did you just testify on your oath that you knew nothing about a grand jury investigation until four months ago?

A Just a moment.

(Pause)

MR. KAUFMAN: Your Honor, I believe Mr. Fleming's earlier question was he heard about the indictment four months ago.

THE COURT: Investigation. Grand jury investigation.

(Pause)

MR. FLEMING: Can I have this marked, please, for identification.

(Defendants Chester Carity and Daniel Friedman Exhibit EU marked for identification)

xx

Q I am going to show you what has been marked as EU for identification and direct your attention to that (indicating). Just read it to yourself.

All right?

Have you read it, the first line?

A Yes.

Q All right.

I would like you to read from here and tell me when you finish the page (indicating).

(Pause)

Q Have you finished reading?

A Yes.

Q Does that refresh your recollection as to whether you knew at the time of the auction that a grand jury investigation of Rio Rancho was being conducted?

A Well, this was after the auction, the auction that I held, because when I did get this subpoena in September of 1975, I still didn't actually know because nobody had told me, other than I had a suspicion that they were under investigation.

Q Have you got the subpoena there? Do you have your copy of the subpoena there?

A Yes, yes.

MR. FLEMING: Mark it, please.

(Defendants Chester Carity and Daniel Friedman Exhibit EV marked for identification)

Q Is this the subpoena you received, a copy of it (handing)?

A Yes.

MR. FLEMING: I offer it.

MR. FLEMING: No objection.

(Defendants Chester Carity and Daniel Friedman Exhibit EV received in evidence)

THE COURT: How does that prove that he knew it at the time of the auction?

MR. FLEMING: I was examining him on what he just testified to.

THE COURT: He says the auction was in August.

MR. FLEMING: I understand that, your Honor. He said when he received this subpoena he didn't know because nobody told him.

THE COURT: Go ahead.

Q This subpoena reads, "United States District Court, Southern District of New York," correct?

A Right.

Q And it commands you to appear before a grand inquest, is that correct?

A Yes.

Q And it is dated September 4, 1975, is that correct?

A Yes.

Q And is it your testimony that when you received this subpoena, you merely suspected that there was a grand jury investigation?

A Yes, suspected, but I didn't know.

Q Didn't know, just suspected.

A Just suspected.

Q Now I direct your attention to Exhibit EU for identification, the portion that you read, especially this portion beginning right there -- just read that down to here (indicating).

MR. KAUFMAN: Your Honor, may Mr. Fleming state on the record what pages he is having the witness read, because I will be referring to it.

THE COURT: What pages?

MR. FLEMING: Pages 20 and 21.

Q Have you read it?

A Yes.

Q Now, does that refresh your recollection as to whether you knew of the grand jury investigation when the uaction was being conducted?

A There was no news stories or anything before, during the auction. This happened on the 24th and 25th of August.

THE COURT: Now wait.

The question put to you is, after reading what Mr. Fleming has shown you, does that refresh your recollection that at the time or immediately prior to the holding of this auction you knew of a grand jury investigation? Does it refresh your recollection?

THE WITNESS: No, it does not, because there was no --

THE COURT: All right. All right.

Q Do you recall being interviewed on December 1, 1976?

A How is that again?

Q Do you recall being asked the following questions and giving the following answers on December 1, 1976, I guess it's fourteen days ago:

"When you were conducting he auction, did you know that Rio Rancho was under investigation?

"A Yes.

"Q So you had heard about it then?

"A Yes.

"Q Way back then? Was that also in the newspaper?

"A What was that, the --

"Q The investigation was going on?

"A Yes.

"Q Some people around here knew that?

"A Oh, yes."

Do yourecall being asked those questions and giving those answers on December 1, 1976 in Albuquerque?

A Maybe at the time that I did say that I didn't know what auction she was talking about, because there were several auctions on Rio Rancho property.

MR. FLEMING: That's all I have.

THE COURT: Redirect.

MR. KAUFMAN: May I see that statement, please?

MR. FLEMING: Pages 20 and 21, would that be correct, your Honor?

THE COURT: I think that's what you said.

MR. KAUFMAN: If that's all you referred to.

MR. FLEMING: Yes.

(Handing)

MR. KAUFMAN: May I have have one minute, your Honor?

MR. FLEMING: I will show you exactly (indicating).

(Pause)

REDIRECT EXAMINATION

XX BY MR. KAUFMAN:

Q Mr. Olguin, you gave a figure of 1800 individual brokers in Albuquerque.

Do you recall that?

A How is that again?

Q I'm sorry.

You gave a figure of approximately 1800 individual brokers in Albuquerque.

A Yes.

Q Are you referring to just brokers or is that brokers plus salesmen?

A No, no, that's brokers.

Q Just brokers?

A This is licensed brokers.

Q Is there a difference between brokers and salesmen?

A Right.

Q Okay.

A pm

Q Do you recall Mr. Arkin asking you whether or not an auction is a distress way of selling? Do you recall those questions being saked of you?

A No.

Q You don't recall Mr. Arkin asking you that?

Did you hear my question, Mr. Olguin?

A Come again on it.

Q Do you recall Mr. Arkin asking you whether or not an auction is a distress way of selling? Do you understand the question?

A No, I don't.

Q Do you recall Mr. Arkin, who is not here any more, asking you questions about what type of sale an auction is, in other words, whether or not it is a distress type of sale?

A I didn't think it was a distress sale, no.

Q What does the phrase "distress sale" mean to you?

A It means that the people actually don't have any more use for whatever they own and they want to sell it to come out a little bit on whatever they have invested.

Q I suppose that if at an auction a number of people are bidding on the same item, the ultimate bid price on the item can be very high, is that correct?

eojw 2 Olguin - redirect

MR. ARISOHN: Objection, your Honor.

THE COURT: Sustained, highly speculative. It could also be very low.

MR. KAUFMAN: I agree, your Honor.

Q Was the resale market for Rio Rancho land in Albuquerque in August of '75 the same as it had been during the previous five years while you were in the real estate business?

MS. CROSS: Your HOnor, I object.

THE COURT: Overruled.

A Actually there hasn't been any resale market of Rio Rancho property in the Albuquerque area.

Q Over what period of time?

A At any time.

Q Since you have been in the real estate business.

A Since I have been in the real estate business.

Q You recall Mr. Arkin asking you about the qualifying broker for Sunland, a Mr. James Bradley?

A Yes.

Q Were you aware that Mr. Bradley had worked for Rio Rancho Estates before he worked at Sunland?

A No, I didn't.

Q Do you recall Mr. Arkin asking you about the going prices for land in the Corrales Village area?

A Yes.

Q And you gave a figure of approximately $5,000 in 1975 and approximately $6500 in 1976?

A Yes.

Q You get that figure based on a price that would be offered in the open market, is that correct?

A That's right.

Q In other words, what that property would bring on the open market, is that correct?

A Right.

Q If there is no resale market for land in the Albuquerque area, what would be the going price for that land?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Is there a resale market for land in the Village of Corrales?

A Yes, there is.

MR. FLEMING: Objection.

THE COURT: Overruled, not in view of Mr. Arkin's question.

Q Your testimony is that there has not been a resale market for land at Rio Rancho Estates, is that correct?

A That's correct.

Q Do you recall Mr. Fleming showing you this grand jury subpoena, which has been marked EV in evidence?

A Yes.

Q Is there anywhere on this supboena where it is stated who the party is who is under investigation?

A No.

Q Your answer is no?

A No.

Q The subpoena says that it wants documents that are in any way related to the auction of lots at Rio Rancho Estates, is that right, Mr. Olguin?

A Yes.

Q That could mean that the people --

MR. FLEMING: I object, your Honor.

THE COURT: Wait.

The exhibit speaks for itself.

Q Mr. Olguin, do you know whether or not you were under investigation or whether or not Rocky Mountain Land Company was under investigation?

A No.

MR. ARISOHN: Objection.

THE COURT: Overruled.

Q Your answer is no?

A No.

Q In any event, you received this subpoena after the auction in August of 1975, is that right?

A That is true.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

THE COURT: Next witness.

MR. DEVORKIN: The government calls Ronald Williams.

RONALD A. WILLIAMS, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: You may proceed.

MR. DEVORKIN: Thank you.

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Williams, would you please speak slowly and keep your voice up so we can all hear you.

Where do you presently live?

A 216 Port Saint Clair, Rockport, Texas.

Q What do you do for a living now?

A Raising beef cattle.

Q How long have you been doing that?

A Since November of 1976.

Q Before November what did you do?

A I was administrative assistant to the executive vice-president of the Albuquerque board of realtors.

Q Who was the executive vice-president?

A Walter U. Williams.

Q Is he any relation to you?

A None.

Q How long did you hold that position?

A From 1967 until 1976.

Q Did you work for the board before that?

A Yes.

Q In what capacity?

A As supervisor of graphic arts from 1962 until 1967.

Q What is the Albuquerque board of realtors?

A It's the local chapter of the National Association of Realtors.

Q Who are its members?

A Real estate brokers who subscribe to a code of ethics, constitution and bylaws and apply to the board of realtors for membership in the national association.

Q Do they pay a fee for membership to the local board?

A Yes, there is.

Q What is the fee each year?

A The initiation fee to the board is $200, one time fee, and annual dues whatever they may be. Currently they are $110 a year.

Q Besides real estate brokers, are there any other kind of members of the board of realtors in Albuquerque?

A There are associate member,s realtor associates who can be a broker or a salesman and then there is a salesman classification of membership.

Q What is the difference between an associate and a realtor?

A A realtor not only can hold office as an officer of the board, but also as a voting member of the board of realtors.

Q In terms of what the person does in Albuquerque in the real estate business, what is the difference between a realtor and an associate realtor or realtor associate?

A Normally a realtor associate or a salesman works for a realtor who is the designated realtor and qualifying broker of an office.

Q How many salesmen or realtor associate members are there of the board?

A Approximately 1500.

Q What does the Albuquerque board of realtors actually do?

A The Albuquerque board of realtors controls the term "realtor" within its jurisdiction in Albuquerque. It also operates the multiple listing service of the board of realtors. It assists members and the general public with any problems or inquiries or information that they may need.

Q What do you mean controls the term realtors?

A We have control of the copyright "realtor" in the Albuquerque area to givern the members in their activities and admit new members to that board.

Q What were your duties as administrative assistant to the executive vice-president?

A Publication of multiple listing service, general operation of the staff and physical plan of the board office, assist directors, officers, committee chair, handle public relations between the board and the general public, keep abreast of legislation, general administrative duties.

Q Did you also hire and fire personnel?

A Yes, I did.

Q Are you familiar, then, with the policies and procedure of the board while you worked there?

A Yes.

Q Please explain how the multiple listing service actually operated, what it is and how it operates?

A The multiple listing service --

Q Will you direct your attention to the period up through 1974?

A Through 1974?

Q Yes.

A The multiple listing service is a committee of the board of realtors. It is wholly owned and subsidized by the board and its members.

The purpose of the multiple listing service is to gather information on properties listed with our board members, reproduce this through a printing process and distribute this information to the members of the board who subscribe to this service.

Q How does a piece of property actually get listed with multiple listing service?

A A real estate office who is a realtor member takes a listing or an employment authority from a seller of a property, which is a legal contract, and a copy of that is sent to the multiple listing service. They use that copy to reproduce the information on that listing. They print it in their publishing plant and distribute it to the members who subscribe to the service.

Q Does the member who sends the listing in to be sent out to the other members pay any kind of a fee?

A He does.

Q What is that fee?

A The fee varies depending on what the annual operating costs are for the board, but it normally would be around $8 processing fee plus a few cents a sheet for each one of the listings that is redistributed back to the membership.

Q That is for each listing a member places with the multiple listing service?

A That is correct.

Q Are there different categories -- withdrawn.

Does the multiple listing service have different categories of property that it publishes advertising for?

A They do.

MR. FLEMING: May we come to the bench, your Honor?

THE COURT: Yes.

We will have a recess now.

(Jury left the courtroom)

(At the side bar)

THE COURT: Yes.

MR. FLEMING: Judge, you may recall that Mr. Devorkin limited Mr. Williams' testimony in the first instance to through 1974.

I think the testimony is going to be as follows:

That up through 1974 this multiple listing service listed various types of property including "vacant land".

Then beginning sometime after the end of 1974 they established a separate listing Rio Rancho ladn or Rio Rancho vacant land.

I think it is very apparent, if your Honor please, from the background of this case for the reason they did that. I can give you further evidence of motivation in this regard as because the FTC complaint had been filed.

Now, that puts us between the rock and the hard place in terms of cross examining this witness because in order to examine to what I offer, and I will offer some further evidence, what I offer as the true motive for the board of realtors establishing this separate category after the FTC complaint was filed, we would have to examine into the filing of the FTC complaint.

MR. DEVORKIN: Can I respond because that is not accurate.

THE COURT: Let him finish.

MR. FLEMING: The same thing happened with regard to Mr. Paul Heinz whom I understood was going to be a witness and was in New York and then sent back to Rio Rancho.

He solicited, he would write letters to Rio Rancho land owners at least as early as 1972 in which he would say for $50 I will try to sell your land. I think it was multiple listed if I am not incorrect.

Then sometime again to my understanding at least after the filing of the FTC complaint he put a little blurb saying I have been trying to sell it for two years and haven't been able to.

I do think that the true motivation here was for them listing Rio Rancho land separately was the FTC complaint and I think it puts us in a very difficult position in regard to cross examination, if your Honor please.

I also don't see much relevance to the proof in any event.

MR. DEVORKIN: The facts aren't as Mr. Fleming stated them. The FTC complaint wasn't until the spring of 1975. The change was in February -- well, February, March, the spring of 1974.

MR. FLEMING: Sometime after '74.

MR. DEVORKIN: Mr. Fleming, I think I know what the witness is going to testify to. He will testify that the change was in the spring of '74. It had nothing to do with the FTC complaint. It had to do with the fact that nobody was interested in Rio Rancho vacant land listings and the members of the board were tired of paying money for listings which included Rio Rancho and wanted to have the option to buy that separately, if you will.

It had nothing at all to do with the FTC complaint. It preceded that complaint by about a year.

THE COURT: He says it was a year before, Mr. Fleming.

MR. FLEMING: This is at page, I believe it is 2078 if I read correctly from the FTC testimony. "When was that separate listing category created?

"A Sometime after 1974.

"Q After 1974?

"A Yes."

Now, I refer your Honor to the testimony that was just elicited. Mr. Devorkin's testimony to my recollection was tell us how the board operated through 1974.

THE COURT: I have up to 1974.

Read it back.

(Read.)

THE COURT: That would be December 31, 1974.

MR. DEVORKIN: I can clarify the precise date when they got to the change.

THE COURT: Mr. Fleming has read something else that is contradictory to what your witness is going to say.

MR. DEVORKIN: There are many documents that reflect when this happened.

THE COURT: This is sworn testimony, I gather?

MR. FLEMING: Yes, your Honor.

MR. DEVORKIN: May I get my copy of this, your Honor?

THE COURT: Sure.

MR. FLEMING: This is from the FTC page, I believe, 2078.

"Q Could you tell me the category out of which CXID200," if I read correctly, "came from?

"A Rio Rancho vacant land.

"Q That's a separate listing category?

"A Yes, sir.

"Q When was that separate listing category created?

"A Sometime after 1974.

"Q After 1974?

"A Yes."

THE COURT: Okay.

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MR. FLEMING: "When was the date of your subpoena to the commission?

"A Pardon me?

"Q May I see the subpoena?

"A '73.

"Q So the subpoena was '73 and the classification you just referred to was established in '74?

"A Right."

THE COURT: All right, that's conflicting.

MR. DEVORKIN: He says it was established in '74.

MR. SPRIZZO: The subpoena was '73.

THE COURT: The subpoena was '73.

MR. DEVORKIN: The complaint that Mr. Fleming is talking about that was issued by the commission was not until 1975. The classification was established in the spring of 1974.

He says here it was established in 1974. That leaves open when in 1974 it happened.

In fact, there is a document I intend to offer, Rio Rancho, by the way, was a member of the board of realtors through one of its subsidiaries during this period of time, but they requested, I believe in May of 1974 from the board of realtors, to continue to receive the Rio Rancho vacant listings. That pins down I think the outside date when the classification was changed. I think Mr. Williams knows approximately when the actual date was and I have talked to him about it and it has nothing to do with the FTC proceedings.

The fact is was the lack of interest in the properties.

THE COURT: Prior to the issuance of the complaint, I can't conceive of the FTC coming in and creating a listing during an investigatory period. When they issued the complaint, I can see them perhaps getting involved, but merely an investigatory period I can't see them coming in and putting pressure on somebody.

MR. FLEMING: I don't think the commission required it. I am not saying that. I am saying that this board of realtors was responding to an FTC investigation which they knew was ongoing with regard to Rio Rancho. We have a hard time attacking that.

THE COURT: Not if the complaint was filed after that, Mr. Fleming. He says it was filed after it and he can prove it.

MR. FLEMING: I don't know what it proves anyway.

MR. SPRIZZO: What is this being offered to prove, Judge?

THE COURT: That is something else.

MR. SPRIZZO: That is another question.

THE COURT: You want to address yourself to that point, Mr. Devorkin?

MR. DEVORKIN: There are a number of things it is being offered to prove, your Honor. AMREP was a member of the board of realtors initially in the late '60's and began to subscribe to the Multiple Listing Service in '71, I think, and then thereafter changed their membership to put it under a different name, I believe Double R Realty.

It continued to subscribe to the Multiple Listing Service. During the period of time during which they were a member the Multiple Listing Service had, '71 through '73 had approximately 700 listings for Rio Rancho land and I think during that time had 20 sales of the property.

Mr. Friend is an officer of Double R Realty as are a couple of the other defendants, I believe.

During this period of time Rio Rancho was also sending letters to certain -- well, at certain times they sent customers referring them to the Multiple Listing or to the board of realtors or to specific realtors who belonged to the board of realtors to list their property.

THE COURT: What does that mean?

MR. DEVORKIN: It shows that AMREP and some of the individual defendants would have been aware that at the same time throughout the entire period they were representing to their Rio Rancho sales dinner customers this is a great investment which they can make money on, there is no interest in the property in the Albuquerque area.

THE COURT: I am addressing myself to your last comment that AMREP and some of the defendants told purchasers of Rio Rancho Estates to go to the Multiple Listing.

That has no relevance to this case at all.

MR. DEVORKIN: The Multiple Listing, it was to realtors or the board or realtors.

THE COURT: That was in conjunction with saying we don't resell. If you want to resell, go to a real estate broker.

MR. DEVORKIN: It does show their knowledge.

THE COURT: That there were real estate brokers.

MR. DEVORKIN: It shows that there are real estate brokers who take listings because that is what they say in some of these letters. Combined with that their membership in the board of realtors and their subscription to the Multiple Listing Service and their directorship of the companies that are members of the board of realtors.

THE COURT: I don't think you are following my question.

You made a statement that this shows that Rio Rancho advised purchasers if they want to sell their land to go to a broker.

Now, what does that prove in this case? The mere fact they told him to go to a broker doesn't prove anything.

MR. DEVORKIN: These letters are some of the lulling letters that were sent to customers, your Honor.

THE COURT: I am asking you a simple question. What relevance is the simple fact that Rio Rancho told a purchaser who wanted to sell his property that he should go and list it with a broker?

MR. DEVORKIN: It shows -- it doesn't say just that, your Honor. It says, you should list your property with such and such a broker or with the board of realtors.

THE COURT: Let's assume that's true. What does that prove in this case telling a person to list his property?

MR. DEVORKIN: It suggests to the customer that he will be able to successfully sell.

THE COURT: It does not at all and I would not take it for that inference. If you want to sell it, I don't sell it for you. Go get the broker to sell it for you. I read those letters.

MR. DEVORKIN: There are other letters.

THE COURT: The letters I have read so far merely say, we don't sell, if you want to sell, go to a broker. The wildest stretch of imagination infers that you are going to be able to sell it. I will not allow it in for that purpose.

What's your next point?

MR. DEVORKIN: At the same time they are sending these letters they know that there isn't any market through such brokers in the Albuquerque area.

THE COURT: That's not what it is being sent for. The simple telling, you raised this, Mr. Devorkin, that is why I am putting you to the explanation, so far you have failed. Merely telling somebody, you want to sell it, I don't resell. Go get a broker to do it for you doesn't mean that that broker is going to sell it for you.

MR. DEVORKIN: I will have to show your Honor the specific letters I am talking about now.

THE COURT: It is out for that purpose.

Now, what's the next point?

MR. DEVORKIN: I think the letters are different than the kind of letters we are talking about.

THE COURT: Let's go on to the next point. There is no guarantee or inference by any letters I have seen so far that you can resell it if you list it with this broker.

From that draw a conclusion that the defendants knew it couldn't be done and therefore there is a misrepresentation.

That's out. What is your next point?

MR. SPRIZZO: That's why I asked the question, I didn't see it.

MR. DEVORKIN: Your Honor, may I ask a clarifying question? Are we talking now about the letters or the change in categories?

THE COURT: I am talking about your statement which you have made on the record and which I asked you how that tied anybody into guilt in this case. You have explained it to me and I am telling you I will not allow such an inference to be drawn from those letters because they don't substantiate any such inference.

MR. DEVORKIN: I understand on the letters. The other thing about the letters, your Honor, is we do have to show that -- well, it helps us show that Rio Rancho is familiar with local brokers in the Albuquerque area. For example, one of the letters -- one of the people they refer people to is Paul Heins, they refer a number of people to Paul Heins.

Paul Heins through the Multiple Listing Service at one time had 400 listings. He had no sales.

Now, it seems to me that by referring people to Paul Heins specifically it does let us argue that the defendnats know who Paul Heins is and they know at least by inference what the nature of his listing operation for Rio Rancho land is.

THE COURT: I know Pease & Elliman, I know nothing about their operation.

MR. DEVORKIN: They have chosen to refer somebody to a particular broker. That implies --

THE COURT: I don't think that implies it at all. I would refer you to Pease & Elliman simply by reputation that they are a good brokerage house. Not that they have been unable to sell my apartment.

MR. DEVORKIN: That's not -- your Honor, I have to get the specific letters because I don't think that's what they are referring to.

THE COURT: I want to get back to Mr. Sprizzo's point.

MR. DEVORKIN: We are talking about the letters.

THE COURT: He is talking about the relevance of this witness' testimony. I think you had better go do a little thinking. We will take our recess.

MR. DEVORKIN: On his testimony, your Honor?

THE COURT: Obviously that's his question.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

THE COURT: You may proceed.

MR. DEVORKIN: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Williams, were there different categories of land or buildings that a member of the board could subscribe to listings for?

A Yes, there was.

MR. FLEMING: I object, your Honor, on the grounds of relevance.

THE COURT: Overruled.

I assume this is preparatory to something that is relevant.

Go ahead.

Q What were the categories of listings that were available for subscription?

MR. FLEMING: Fix a time, please.

Q Before June of 1974?

A That was east residential, it was west residential, there was rural residential, multiple-dwelling, special use, vacant land and business.

Q And what geographical area did east and west residential include?

A East residential is residents that are east of the railroad tracks within the city limits of Albuquerquer west residential was west of the railroad tracke.

Q By residential, do you mean homes?

A Single-family dwellings.

Q And vacant land in this case, at that time, included what areas?

A All areas.

Q Were members of the board charged any fees for subscribing to these different categories?

A Yes.

Q What were the fees?

A The fees varied, depending, between three and six cents for each sheet of the listings that came back to them and each sheet contained one listing.

Q They would have to subscribe to one whole category and take all the sheets listed in that category?

A In that category, correct.

Q And then they would pay by the number of sheets in that category?

A That's correct.

Q When a listing came in for a broker who had an agreement with a prospective seller of property, how did you notify your members that the property was being listed?

A We had a daily update sheet that was called the listings received sheet, and these listings were put on this sheet and published and sent out to the members five days a week. This let them know that these listings were in process at that time and hadn't been distributed.

Q And there came a time after that that they were distributed formally?

A Yes.

Q What kind of information was distributed with the listing to each of the members of the Multiple Listing Service?

A The listing itself, the listing sheet?

Q Yes.

A Price, listing number, location, zone coordinate map which would give the geolographical location within the city, terms of sales, selling price, who the owner was, dimension of the rooms, lot size, various information.

Q Generally speaking, would that also be true of the vacant land properties?

A Yes.

Q Were there any procedures that a member of the Multiple Listing Service had to follow if he made a sale on a particular lot listed with the Multiple Listing Service?

A Yes.

Q What were those procedures?

A The sale must be reported, either called in to the board staff or submitted in writing to the board within two working days.

Q And whom did that requirement apply to?

A All participants in the Multiple Listing Service that sold the property.

Q What was the purpose of that requirement?

A So the property could be removed from the market and we could compute our comparable figures and sales statistics.

Q And what, if anything, did the board do when it was notified of a sale of property?

A Removed it from the current inventory, put it into the comparable inventory and notified the membership of the sale.

Q Who did you notify the membership of the sale?

A Through an additional daily bulletin that was called a daily letter. It notified them that it was sold, who sold it, what the price was and who bought it.

Q And how were those daily bulletins distributed?

A They were either hand carried or sent by federal mail.

Q Do you know what Double R Realty is?

A Yes.

Q What is it?

A It's a real estate office in Rio Rancho Estates.

Q Are they a broker?

A Yes.

Q By the way, when you have a broker's license in Albuquerque, are there any restrictions on the kinds of properties you can sell with that license?

A No.

Q You can sell homes and vacant property?

A That's correct.

Q Are you familiar with the name AMREP Corporation?

A Yes.

Q Were they ever a member of the board of realtors?

A Yes.

Q When were they first a member?

A 1968.

THE COURT: For how long?

Q For how long a period did AMREP as AMREP stay a member of the board using the name AMREP, that is?

A Initially, when they came in, they used the name Rio Rancho Estates. In 1971, the name was changed to Home Management, in 1973 to Double R Realty.

Q During that time, did any of those organizations ever subscribe to the Multiple Listing Service?

A Yes.

Q When was the first time that that occurred?

A My first recollection is 1971.

Q And do you know which categories of the Multiple Listing Service they subscribed to?

A West residential and vacant land, that I can remember. There could have been others.

Q Was the subscription to the Multiple Listing Service continuous?

A Yes.

(Continued on next page.)

MR. DEVORKIN: I would like to offer Government Exhibit 938 for identification.

MR. FLEMING: I object as irrelevant, your Honor.

THE COURT: Let me see it.

(Handing to the Court)

(Pause)

THE COURT: What is this?

MR. DEVORKIN: It is a document that shows some information about RR Realty, your Honor.

THE COURT: How did you get this?

MR. DEVORKIN: He didn't get it, your Honor.

THE WITNESS: I never saw it, your Honor.

MR. DEVORKIN: It is a document produced by the company.

THE COURT: Doesn't this come in under some other basis for stipulation which was arrived at at pretrial conferences?

MS. CROSS: We were supposed to get a chart from the government that would cover that.

THE COURT: That is right.

Objection sustained.

MR. DEVORKIN: Your Honor --

THE COURT: Objection sustained.

Q Where was RR Realty's office at?

A Rio Rancho.

Q So I understand this, you are saying that Rio Rancho changed its membership to the name Home Management?

A Yes.

Q Then it changed it to the name of RR Realty?

A That's right.

Q Did you have any dealings with RR Realty?

A Yes.

Q Who did you deal with?

A A man named Rhino out there.

Q Do you know his first name?

A A.B.

Q And RR Realty continued -- did RR Realty continue the multiple listing subscriptions in vacant land and west side residential?

A Yes.

THE COURT: For how long?

THE WITNESS: Until I left the board, your Honor.

THE COURT: When was that?

THE WITNESS: November 5, 1976.

Q During the period 1971 to 1973, do you know gtjw 3 Williams-direct

how many listings there were for Rio Rancho properties, vacant land properties, that were carried by the multiple listing service?

A Yes.

Q How many?

A There were 690.

Q And during the same period of time, how many sales of Rio Rancho vacant land properties were there reported by members of the multiple listing service?

A Approximately twenty.

MR. ARISOHN: Excuse me, your Honor. Is that between 1971 and 1973?

Q The years 1971, 1972 and 1973.

A Correct.

Q Do you know who Paul Heinz is?

A Yes.

Q Who is he or who was he?

A He was a real estate broker who was a member of the Albuquerque board of realtors.

Q Do you know when he left the board of realtors?

A In 1974.

Q Approximately when?

A Approximately July.

Q Was he a subscriber to the multiple listing service?

A Yes.

Q Did he place any listings of Rio Rancho vacant land through the multiple listing service?

A He did.

Q About how many before he -- withdrawn.

Through the period 1973, about how many listings of vacant land at Rio Rancho did Mr. Heinz place?

A 1973, approximately -- probably 400 of them.

Q And how many sales did he report, if any?

A None.

Q The listings of Rio Rancho properties was included, within that time period, in the vacant land category?

A Up until 1974, yes.

Q And those listings were sent to RR Realty?

A If they subscribed to it at that point, yes.

Q And they did subscribe?

A Yes.

Q Were they also notified of the sales, the twenty sales of Rio Rancho vacant land during that period?

A Yes.

Q During 1971 to 1973, did the board of realtors ever receive any letters from Rio Rancho lot owners?

A Yes.

Q Just generally, without stating what they said specifically, what was the nature of the letter?

MR. FLEMING: I object to that.

THE COURT: Sustained.

Where are the letters?

MR. DEVORKIN: Well, I don't think it is necessary to put all the letters in the record, your Honor.

Q Were these inquiries?

A Yes.

Q Of what sort?

MR. FLEMING: I object.

THE COURT: Sustained.

Q About how many letters did you receive during that period of time?

A One to three a day.

Q Did there come a time when that increased?

A Yes.

MR. FLEMING: I object to that.

THE COURT: I don't know what this is all about, but I am sustaining the objection and I am striking the answer one to three.

Get the letters in here. Let the jury see what they are, not through this man.

Q Did you keep those letters, Mr. Williams?

A For a period of time.

Q And then what would you do with them?

A We would throw them out.

Q Did there come a time when you supplied whatever letters you had on file to the U.S. Attorney's office?

A Yes.

Q When was that, if you recall?

A I don't recall exactly when we supplied it.

MR. DEVORKIN: Can we mark these two folders the last numbers you have.

(Government Exhibits 1800-A and 1800-B, respectively, marked for identification)

xx

Q Let me show you Government Exhibit 1800-A and 1800-B for identification (handing).

Would you just glance through them and see if you recognize them?

(Pause)

Do you recognize them?

A Yes.

Q What are they?

A Letters received by the board of realtors in Albuquerque.

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Q From Rio Rancho customers?

A From persons who had contacted us about Rio Rancho.

Q These are not all of the letters, I take it?

A No.

Q These are just what you had at the time you were asked to provide them?

A Yes.

MR. DEVORKIN: I offer Government's Exhibit 1800-A and B.

THE COURT: Show them to the defendant.

MR. FLEMING: We object on the grounds of relevance, your Honor. We also have never seen them. I don't believe they were marked as pretrial exhibits.

THE COURT: Were they marked?

MR. DEVORKIN: I didn't intend to use them.

THE COURT: You did not think you were going to get evidence in through this man, did you?

MR. DEVORKIN: All I wanted was his response.

THE COURT: To what?

MR. DEVORKIN: To letters of inquiry, that is all.

THE COURT: That isn't what you were asking this man about, letters of inquiry?

MR. DEVORKIN: Yes.

THE COURT: That was not the inference in your question, Mr. Devorkin. Letters of complaint was the inference in your question.

MR. DEVORKIN: I didn't mean that implication, your Honor. I don't intend that implication. These are letters of inquiry about resale of Rio Rancho property. That is all I want to offer the testimony for.

THE COURT: Now that counsel know that, do you want to let them in or let the witness testify without the benefit of these letters?

MR. FLEMING: Sure.

MR. DEVORKIN: I apologize, your Honor.

THE COURT: All right.

Q These were letters requesting information about reselling Rio Rancho lots, is that correct, Mr. Williams?

A That's right.

Q You said there were about one to three a day for a period of time.

A That's correct.

THE COURT: From what period of time?

THE WITNESS: From '71 to 1973, your Honor.

Q Did there come a time when the frequency of the inquiries increased?

A By the end of 1973.

Q What was it at that time, approximately?

A Up to five a day.

Q Did there come a time when the board of realtors prepared a response to these inquiries?

A Yes.

Q What was the purpose of preparing the response?

A To --

THE COURT: You mean a form response.

Q Yes, I am talking about a response the board prepared for its own use, the board of realtors prepared for its own use.

A The purpose of the form letter that we prepared was to alleviate an administrative overburden of contacting these inquiries that we had through the use of a form letter rather than a personal letter written to each one ofthe persons that had inquired.

Q When you prepared the form response, did you examine your files to determine the number of listings of Rio Rancho properties and the number of sales of those vacant properties?

A We did.

MR. DEVORKIN: Could we mark this 817-A, please.

(Government Exhibit 817-A marked
xx for identification)

Q Shoiwng you Government Exhibit 817-A for identification, do you recognize that?

A Yes.

Q What is that?

A That is the form letter we prepared in response to inquiries?

Q Are the facts stated in there about sales and listings of Rio Rancho vacant properties accurate on your records at the time?

A They are.

MR. DEVORKIN: I offer 817-A.

MR. FLEMING: I object, your Honor, as irrelevant and incompetent and not subject to cross examination.

THE COURT: Let me see it.

(Pause)

THE COURT: Objection overruled.

(Government Exhibit 817-A received
xx in evidence)

MR. DEVORKIN: The question is directed to you, Mr. Williams.

THE WITNESS: That was prepared in the spring of 1974, your Honor.

Q Was this form letter used for further inquiries by Rio Rancho lot owners?

A It was.

Q Did there come a time when the board prepared a form response that its members might use themselves in response to Rio Rancho owners inquiries for resale?

A Yes.

Q When was that?

A That was again in the spring of 1974.

Q Did the members request you to do that?

A Yes.

Q Did the board of directors of the board of realtors consider the matter?

A Yes, they approved it.

Q They approved the form letter?

A Yes.

Q Let me show you what has been marked as Government Exhibit 817-B for identification and ask you if you recognize that?

A Yes.

Q What is it?

A It's the form letter that we sent to the membership so that they may use it if they wished to respond to inquiries about Rio Rancho.

Q The form letter appears at the bottom of this sheet of paper marked 817-B?

A Yes.

Q At the top what is there?

A There is a brief memo signed by the executive vice-president of the board.

Q Is that his signature?

A Yes.

MR. DEVORKIN: I offer 817-B.

MR. ARISOHN: A few questions, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ARISOHN:

Q Mr. Williams, am I correct that the signature on this document is that of Walter Williams?

A That is correct.

Q That is the executive vice-presdient?

A That is right.

Q This was the letter that was sent to the members of the board of Albuquerque realtors which was your suggestion to them to send out to customers who inquired of them?

A It wasn't my suggestion.

Q I am sorry, the board's suggestion.

A Yes.

Q You only sent this to the members of the board, not to any individual customers of those members, am I correct in that?

A That's correct.

Q You don't really have any knowledge as to whether or not this advice was ever followed by the members of the board, is that correct?

A That's correct.

MR. ARISOHN: We object, your Honor.

THE COURT: Overruled.

(Government Exhibit 817-B received in evidence)

MR. DEVORKIN: Will you mark this 817-C.

(Government Exhibit 817-C marked for identification)

BY MR. DEVORKIN:

Q Mr. Williams, showing you Government Exhibit 817-C for identification, do you recognize that?

A Yes.

Q What is it?

A It's a resume of the minutes of the regular board of directors meeting of February 13, 1974.

Q Was that the meeting at which the Rio Ranch form letter for possible use by members was approved?

A Yes.

Q 817-B was sent out by the board to all of its members?

A Yes.

Q Did you supervise that distribution?

A Yes.

Q Did that include RR Realty?

A Yes, all members.

Q What about the resume of minutes of the meeting of February 13, 1974, who was that sent to?

A All members.

Q Including RR Realty?

A Yes, all members.

Q Was it the normal practice to send resumes of board of directors minutes to members?

A Yes.

MR. DEVORKIN: I offer 817-C.

MR. FLEMING: Same relevancy objection, your Honor.

THE COURT: Let me see it.

(Pause)

THE COURT: The only thing I see here is No. 1.

MR. DEVORKIN: I would only offer No. 1 if it is necessary to cut and paste it, but if there is no objection, I would just as soon leave the document intact.

THE COURT: I will let No. 1 in.

(Government Exhibit 817-C received in evidence)

xx

dy

T6B. PM

MR. DEVORKIN: Will you mark this 871-D.

XXX

(Government Exhibit 871-D marked for identification.)

Q Mr. Williams, showing you Government's Exhibit 871-D, which for the record is a four-page document, four separate pages -- I will make it three separate pages -- would you look at those pages and tell us whether you have ever seen them before?

A Yes, I have.

Q Where have you seen them before?

A In the legal files at the Board of Realtors.

Q On the first document there is some handwriting in the left-hand corner. Do you recognize that handwriting?

A Yes.

Q Whose handwriting is that?

A Walter Williams.

MR. DEVORKIN: The middle document is a copy of the front page. I will remove that. Just for the record, the first page is a letter dated February 28, 1974 and the second page is one dated March 8, 1974.

Q Who is George T. Harris?

A He is one of the legal counsel for the Albuquerque Board of Realtors.

MR. DEVORKIN: I offer Government Exhibit 871-D.

(Pause.)

MR. FLEMING: I object as being, if your Honor please, hearsay and not marked prior to trial.

MR. DEVORKIN: It has just been received recently.

THE COURT: Let me see it.

(Pause.)

THE COURT: It is unnecessary in view of the witness' testimony. Objection sustained.

MR. DEVORKIN: May I read 871-A, B and C, your Honor?

THE COURT: Yes.

Those are the form letters?

MR. DEVORKIN: Yes, sir.

THE COURT: Give them to the jury during the recess.

Q After these form letters were adopted and sent out, Mr. Williams, did you continue to receive inquiries about Rio Rancho vacant land properties, reselling those properties?

A Yes.

Q Did you receive more or fewer inquiries?

A After a period of time we received fewer.

Q At the time this form letter was adopted, was any change made in the vacant land categories listing of the Multiple Listing Service?

A Yes, it was.

MR. FLEMING: I object, your Honor.

THE COURT: Overruled.

Q What was the reason for the change?

MR. FLEMING: I object.

THE COURT: Overruled.

A We changed -- the change we made went from a straight vacant land listing as a blanket for all vacant land properties to vacant land within the city, rural land out of the city and Rio Rancho vacant land in a separate category.

Q Did you receive any requests to make that change?

A Yes.

Q From whom?

A The members who subscribed to the Multiple Listing Service.

Q What were the nature of the requests?

MR. FLEMING: Object to that.

THE COURT: Sustained.

Q What was the reason that the Board made the change?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q A member of the Board or a subscriber to the Multiple Listing Service who subscribed to vacant land properties before the change paid for all the listings he received, is that correct?

A That's right.

Q After the change he could choose any of the different new subscriptions that you created, correct?

A Yes.

Q He could choose Rio Rancho properties or not as he saw fit?

A Yes.

Q He could choose other vacant land properties as he saw fit after the change, correct?

A Yes.

Q Initially when the change was made how many subscriptions by your members were there for the Rio Rancho category?

MR. FLEMING: Objection, your Honor.

THE COURT: You mean right after he made the change?

Q Initially after the change, when you installed the new category for Rio Rancho vacant land listings, how many subscriptions to that category did you get?

MR. FLEMING: I object, your Honor.

THE COURT: Overruled.

A We started with 22.

Q What happened after that, if anything?

A It diminished from that point in time until just prior or at the time I left there were two or three subscribers at the time I left in November.

Q Who were the subscribers?

A I can only recall two of them.

Q Who were they?

A One was Double R and the other was Robert Swanson.

Q Who was Robert Swanson?

A He is an appraiser in Albuquerque.

Q Showing you Government's Exhibit 1028 for identification, do you recognize it?

A Yes.

Q What is it?

A It's a letter dated May 28, 1974 to me advising --

Q Who is it from?

A From A.B. Reino, realtor.

Q At Double R Realty?

A Yes.

Q Did you receive that letter from Mr. Reino?

A Yes.

MR. DEVORKIN: I offer 1028.

MR. FLEMING: Objection, your Honor.

THE COURT: Let me see it.

(Pause.)

THE COURT: Objection overruled.

XXX (Government Exhibit 1028 received in evidence.)

MR. DEVORKIN: May I just read this, your Honor, to the jury?

THE COURT: Yes.

(Mr. Devorkin read from Government Exhibit 1028 in evidence to the jury.)

Q Was there some kind of clerical error that stopped the listing for sometime?

A Yes.

Q Is that what this letter refers to?

A Yes.

Q After that letter, was the error straightened out and the listings for vacant land at Rio Rancho sent to Double R?

A Yes, they were reinstated.

Q Mr. Williams, how long did you live in Albuquerque?

A Approximately 14 years.

Q That was during the time you worked for the Board of Realtors?

A Yes.

Q During that time have you seen Albuquerque grow?

A Yes.

Q Where has most of the growth occurred?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q You are familiar --

THE COURT: After the last four witnesses, I don't need any more of that.

Q You are familiar with the residential and vacant land listings of the Multiple Listing Service, is that correct?

A Yes.

Q Where have most of the residential listings been during the 14 years you were with the Board?

MR. FLEMING: Same objection.

THE COURT: Sustained.

Q Where have most of the vacant land listings been?

MR. FLEMING: I object.

THE COURT: Sustained.

Q Where have most of the vacant land sales been?

MR. FLEMING: I object.

THE COURT: Sustained.

MR. DEVORKIN: At this time, your Honor, I will offer Government's Exhibit 657. It is a document produced by the defendants.

(Pause.)

MR. FLEMING: I object, your Honor. It has no relation to the testimony of this witness.

THE COURT: Let me see it.

MR. DEVORKIN: It is without the handwriting, your Honor.

(Pause.)

THE COURT: What has this got to do with this witness?

MR. DEVORKIN: There is discussion in there about local market and ability to penetrate the local market.

THE COURT: Objection sustained.

We have had seven witnesses now starting with witness number 30, I think it is. We have gone all over this.

MR. DEVORKIN: Your Honor, that is a company document discussing --

THE COURT: I am sorry, you have had seven witnesses. There is an end. Cumulative.

MR. DEVORKIN: All right.

THE COURT: For nearly a week.

(Continued on next page.)

MR. DEVORKIN: I offer 1025 and 166.

MR. FLEMING: If your Honor please, we have a witness on the stand. I take it those documents have nothing at all to do with this witness, he has not seen it, he has not identified them.

I object to them at this time.

THE COURT: Finish up with the witness.

MR. DEVORKIN: Your Honor, they are relevant to his testimony. They are company produced documents.

THE COURT: What has a company produced document to do with it? We went through it months ago, didn't we? Let's not come back to that argument.

MR. DEVORKIN: They are relevant to this man's testimony.

THE COURT: Come up to the side bar and show it.

December 7th you started in this area. There has got to be an end to it. Today is the 14th.

(At the side bar.)

THE COURT: Let me see it.

(Handing to the court.)

(Pause.)

THE COURT: It has nothing to do with this witness.

MR. DEVORKIN: There is a discussion about the ability to sell your property.

THE COURT: Nothing to do with this witness' testimony.

MR. DEVORKIN: I will offer it afterwards.

THE COURT: Objection sustained.

Finish this witness and get him off the stand.

MR. DEVORKIN: I am finished with this witness.

THE COURT: Good.

Cross examination.

(In open court.)

XXX CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Williams, what were the names of the board of directors of the Real Estate Board from 1970 to 1974?

A I don't recall them.

Q You recall receiving one to three letters a day between 1971 and 1974 from Rio Rancho property owners, but you do not recall the names of the board of directors of the Albuquerque Real Estate Board?

A Sir, I have had 14 board of directors and there are 15 directors at one time, sir.

Q Do you recall any names?

A Not -- not absolutely, no.

Q You testified about a code of ethics of realtors, is that correct?

A Yes.

Q Is it a part of the code of ethics of a realtor that he may not list a property for sale except at what the realtor considers to be fair market value?

A No.

Q It is not?

A No.

Q Did you testify that between 1971 and 1973, was it, that you received 600 listings for the sale of Rio Rancho property?

A 690.

Q 690 between 1971 -- is that the three-year period, 1971, '72 and '73?

A Yes.

Q That's 690 listings, then, up to January 1, 1973, is that correct?

A Yes.

Q 690 requests for listings from owners?

A No. I misunderstood your question. I thought you meant how many listings did we receive to distribute to salesmen and distributors. I'm sorry.

Q Well, that's what I did ask.

In other words, 690 land owners were in contact with you to sell their Rio Rancho land, is that a fair statement?

A No. There were 690 listings that were listed by board members during that period of time.

Q What is the difference between a listing and an individual?

A There is a contract between the broker and the seller of the property that if he sells the property at the sale price or terms acceptable to the seller, that he will be paid a commission. That is called a listing.

Q And that listing has to do with a single seller, is that correct, or prospective seller?

A Yes.

Q Am I correct that 690 listings equals 690 prospective sellers?

A That's correct.

Q All right.

So the 690 listings equals 690 people who owned Rio Rancho land and asked to sell it?

A That's correct.

Q During the three-year period 1971, 1972, up to December 31, 1973?

A Right.

Q Do you have any idea what percentage 690 was of the total number of people who owned Rio Rancho land during that period of time?

A I do not.

Q Did you testify that of those 690 listings, that is, people asking to sell their land in 1971, 1972 and 1973, some 400 had come from a single realtor named Paul Heins?

A Yes.

Q And not a single one of the listings which came from Heins during that three-year period was sold?

A Not that we recorded.

Q All right.

But 25 of the total of 690 were sold?

A That's correct.

Q So that if we take 400 from 490, we add 290 people who want to sell their land not through Heins who came to the Albuquerque board, is that right?

A They did not come directly to the board.

Q All right. Whom the board received --

A Through brokers.

Q 290 people who wanted to sell their land and didn't go through Heins?

MR. DEVORKIN: Your Honor, I object. It is not wanted to sell the land, it is people who actually signed the contract to list. There were a lot of other inquiries besides --

MR. FLEMING: I move to strike that, if your Honor please.

THE COURT: Sustained.

He is just referring to the 690 figure.

Q Am I correct if we eliminate the Paul Heins 400, there was, for the three-year period 1971, 1972 and 1973, received by you people 290 listings?

A That's true.

Q 290 people?

A That's right.

Q And there were 20 sales?

A That's right.

Q About 16 per cent of those sold, of those you received sold out of the 290?

A I don't know that it figures out to 16 per cent.

Q Okay.

MR. DEVORKIN: It is less than 10 per cent, your Honor, if you figure it out.

MR. FLEMING: You are right about that, it is less than 10 per cent.

Q It is 20 into 290, correct?

A Correct.

Q Now let's get to the Heins 400.

Am I correct that Heins solicited Rio Rancho land owners?

A Yes.

Q In other words, he wrote letters to people who owned Rio Rancho land and he said, "Would you like me to sell your land for you?"

A That's correct.

Q As a matter of fact, he wrote thousands of letters, did he not?

A I don't know the number, sir.

Q So far as you know, Paul Heins made a massive solicitation of Rio Rancho property holders to see if they wanted to sell their land and offered his services to them for that purpose?

MR. DEVORKIN: Objection.

THE COURT: He can ask him. What's wrong? If he knows, he can answer yes. If he doesn't know, the answer is no.

A Yes.

Q That's true, isn't it?

All right.

And having done that, as far as you know, he got

400 responses over three years?

A Yes.

Q To your knowledge, did the members of the board of directors of the -- what is the name of your agency?

A The Albuquerque Board of Realtors.

Q All right.

There was a 15 man board of directors, you say, of the Albuquerque Board of Realtors, is that correct?

A Yes.

Q Were each of those board members themselves in the real estate business?

A They were.

Q Were any of them in construction as well as in real estate?

A They may have been. I don't -- I don't know absolutely.

Q Did some or all of them have property interests in various parts of Albuquerque?

A They could have had, yes.

Q Did some or all of them have interests in developments under way or planned in various parts of Albuquerque?

A They could have. I have no way of knowing.

Q Did some or all of them have land to sell, that is, as broker, in various parts of Albuquerque?

A Yes.

Q Is it fair to say that the board of directors had specific and individual financial interest in the sale of land in particular parts of Albuquerque?

A They could have.

Q And specific and individual financial interest in the development of land in various parts of Albuquerque?

A Again, I have no way of knowing.

Q Well, you knew who they were.

A They could have.

Q You knew what their business was?

A Yes.

Q You know that some were in construction?

A Possibly, yes.

Q Construction people build and sell for a profit, they hope, is that right?

A Yes.

Q And you knew that some of them were realtors?

A Yes.

Q You knew that some of them were both?

A Yes.

Q And realtors sell property for a profit, they hope, don't they?

A Normally.

Q And these people were the board of directors of your agency, isn't that right?

A That's right.

Q Is it fair to say that as the board of directors they ranked among the most influential and powerful realtors and people in Albuquerque?

A Not necessarily, no.

Q Was Mr. Cox on the board of directors?

A He has been.

Q Mr. Nelson?

A He has.

Q Dale Bellamah?

A I don't know that Mr. Bellamah ever has been.

Q Did he ever deal with the board of directors, Mr. Bellamah?

A An agency representing real estate headed by Michael Driggers, yes, is a member of the board. I don't know that -- Mr. Bellamah specifically was never a member of the board.

Q But an agency headed by a Mr. Griggers -- was Mr. Griggers a member of the board of directors?

A No.

Q What is this Griggers thing, what did you say it was?

A Michael Driggers. He was a qualifying broker for the Dale Bellamah Realty office.

Q I see. And he was not a member of the board -- he was not a director,he was just a member of the --

A Of the board, that's correct, sir.

THE COURT: We will adjourn until tomorrow morning at 10:00.

MR. FLEMING: I can use the three minutes if you want to use them. I think I can finish.

THE COURT: Okay.

MR. FLEMING: Do you have those letters in evidence?

MR. DEVORKIN: They are not all in evidence.

Q You made a change in listing in 1974, isn't that correct.

A That's correct.

Q And that's when you first listed Rio Rancho land separate from other vacant land?

A That's correct.

Q And if I can make this the last question for the day, wasn't that after the Board of Realtors had received a subpoena from the U.S. Government for its records?

A It could have been. I don't know when the subpoena was delivered.

Q Have you not testified that you were subpoenaed, your records were subpoenaed by the U.S. Government in 1973 and Rio Rancho was listed out separately after that?

MR. DEVORKIN: He never testified to that.

A I never testified to that, sir.

MR. DEVORKIN: If Mr. Fleming knows -- well, I'm not -- withdrawn.

Q Well, do you recall testifying this year about a four volume set of papers called CXID200?

A Yes.

Q Yes.

And do you recall testifying that a separate listing category was created by the Albuquerque Board of Realtors entitled "Rio Rancho Vacant Land"?

A Yes.

Q And do you recall being asked these questions and giving these answers:

"Q When was that separate listing category created?

"A Sometime after 1974.

"Q After 1974?

"A Yes.

"Q When was the date of your subpoena to the commission?

"A Pardon me?

"Q May I see the subpoena?

"A 1973.

"Q So the subpoena was 1973 and the classification you just referred to was established in 1974?

"A Right.

"Q Well, in 1973, at the time you received the subpoena, what was the category of documents in which the papers that comprise CXID200 were located?

"A The vacant land listing."

Does that refresh your recollection that prior to the receipt of a subpoena from the U.S. Government, Rio Rancho land was listed under vacant land generally?

A That's true.

Q And after your Board of Realtors received a subpoena from the U.S. Government, Rio Rancho was listed separately?

A That's true.

MR. FLEMING: I have nothing further tonight, your Honor.

THE COURT: We will adjourn to tomorrow morning at 10:00.

Ladies and gentlemen of the jury, I think we have some good news for you. There isn't much during this.

There will be no session of the court as far as the jury is concerned on Thursday and Friday in an endeavor, in your absence, to see if we can't shorten the presentation of the evidence, so you will not sit Thursday and Friday of this week.

(The jury left the courtroom.)

(Continued on next page.)

THE COURT: Is there any further cross examination?

MR. ARISOHN: Yes, your Honor. Tomorrow morning I would like to have cross examination.

THE COURT: There is another person that wants to cross examine you and I assume Mr. Devorkin is going to take you back on redirect, so you will have to come back tomorrow morning, Mr. Williams.

MR. FLEMING: I may have a few questions myself, your Honor.

THE COURT: All right.

MS. CROSS: Your Honor, there was one other matter which I would like to bring up.

We have spoken to Mr. Woodward about the possibility of getting --

THE COURT: Wait a second. You are excused now.

(Witness excused)

MS. CROSS: An exact duplicate of Government Exhibit 1075-A which we would like to have so that we can utilize in the preparation of the defense.

Mr. Woodward informs me that it would cost about $270 to make a duplicate of 1075-A, which is the large 1975 mosaic, and that is agreeable to us, except that he says that the U.S. Attorney's office has the negatives and we have to get them from the U.S. Attorney's office.

Mr. Devorkin has informed me that if we want a copy of it, we will have to bear half the cost of its having been produced initially.

MR. DEVORKIN: That's right.

MS. CROSS: The only reason we want a copy is that it was produced originally.

MR. DEVORKIN: Your Honor, the exhibit is in evidence. Mr. Woodward, in fact, told Ms. Cross that the work that had been paid for by the government to produce those negatives costs a substantial amount of money beyond this and that work had been paid for under contract by the government and the negatives, therefore, are part of the government's property.

My understanidng of policy is that when we paid to have that done, we don't have an extra copy of that, that they should bear a pro rata share of what it cost us to produce it.

THE COURT: Give them the negatives.

The next point.

MR. DEVORKIN: I think there is some rule that covers this, your Honor.

gtjw 3

THE COURT: Give them the negatives.

For the amount of money the government must have spent in preparing this case, the cost that you are trying to recoup from the defendants must be like a speck on the sun.

MR. DEVORKIN: That exhibits costs $1,000 to prepare and I think they should pay for half of it.

THE COURT: You don't listen very carefully.

The cost of preparing this case against the defendants must have been so large when you include the last three years and the Federal Trade Commission proceedings, that their share of this item would be like a speck on the sun.

What is your next point?

MS. CROSS: That was my only point.

THE COURT: Now Mr. Hoffinger has something he wants to raise.

MR. HOFFINGER: Yes.

Your Honor, in connection with the government's offer to attempt to read Mr. Friend's testimony, will take place very soon, in behalf of Mr. Blum, he would be joining in the other defendants to the objecting of reading that testimony.

But if your Honor should overrule that objection and read in the testimony, then we request, at page 62-- this is the following portion of Mr. Friend's testimony be read in as well, and I am referring to page 62 of the testimony --

THE COURT: I don't have the documents here. I left them upstairs. I worked on them during lunch at my desk.

Is this one of the pages the government intends to read?

MR. HOFFINGER: No. The government does not intend to read that, they intend to read other pages, and what I am asking for is if the government is permitted to read in the testimony of Mr. Friend that it read also in that particular paragraph that is on page 62 of the testimony of September 2nd, 1975, lines 2 through 10.

I might suggest, your Honor, if your Honor wishes, that you redact the name of Howard and Chester and put in the words "other people".

THE COURT: Why?

MR. HOFFINGER: Well, if --

THE COURT: If you want this read, this goes in the way it is.

MR. HOFFINGER: In behalf of Mr. Blum, I do want that read.

THE COURT: All right.

MS. HYNES: Your Honor, with respect to Mr. Hoffinger's request, none of the testimony that we have designated deals with the executive committee, none of it deals with Mr. Irving Blum and what Mr. Hoffinger is trying to do is to have us read in what he wants in connection with his client.

THE COURT: My recollection of the documents I have read so far, there is no need to read this in as far as Blum is concerned.

MR. HOFFINGER: Your Honor, what we are saying is this:

We say as a matter of fairness, this ought to be read in, because there is a tremendous --

THE COURT: You don't listen to me. You are as bad as Devorkin here.

MR. HOFFINGER: Well, it is catching.

THE COURT: And Kaufman, too.

There is nothing in what I have read so far that justifies bringing this in for clarification or fairness.

MR. HOFFINGER: I understand. I just want to make a submission.

THE COURT: If I find there is, I would let it in, because there are two lines I think I have let Friend read in addition to what the government has proposed, at least that was the preliminary ruling I had made before, but there is nothing that I know of, if the government's requests are the same that they made before, which would justify this.

MR. HOFFINGER: Your Honor, just at the risk of just burdening the record for just a moment, I am not suggesting the government is reading in anything that directly harms Mr. Blum, but what I am saying is that in the nature of what is being read in, Mr. Blum is harmed by a tremendous amount of spill-over effect, as I submit he has been harmed throughout this trial. That is my submission.

THE COURT: I only heard his name once. Somebody saw him walk into AMREP's office after the indictment.

MR. HOFFINGER: Yes. They said hello.

And Mr. Perlmutter was asked about the executive committee and he said that Mr. Blum was on it.

THE COURT: If that is your argument, it is denied. But I will check it against what I have that the government is going to put in.

MR. HOFFINGER: Yes. Especially Mr. Perlmutter's testimony, your Honor.

THE COURT: Anything else?

MR. FLEMING: No, your Honor.

Good night, your Honor.

(Adjournment taken to December 15, 1976, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Le[illegible] Raymond Seay (Resume[illegible]	4910	4923 4967	4940	
Richard L. Musgrove	4945			
Peter Olguin	4976	4999	5034	
Ronald A. Williams	5040	5091		

EXHIBIT INDEX

Government	Identification	In Evidence
1504		4918
801-K		4996
801-C		4997
1800-A,1800-B	5071	
817-A	5075	5075
817-C	5078	5080
871-D	5081	
1028		5086

Defendants Chester Carity and Daniel Friedman	Identification	In Evidence
ER	4939	
ET		5023
EU	5029	
EV	5030	5030

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 15, 1976
10:25 A.M.

Trial Resumed

(In open court - jury present)

THE COURT: Good morning.

You may proceed.

RONALD A. WILLIAMS, resumed.

CROSS EXAMINATION CONTINUED

XX BY MR. FLEMING:

Q Mr. Williams, when we concluded last evening, do you recall that I read certain questions and answers which had been asked of you and given by you earlier this year and I asked if that refreshed your recollection that prior to the receipt of a subpoena from the United States government Rio Rancho land was listed under vacant land and your answer was "That is true".

My question, "After your board of realtors received a subpoena from the United States government, Rio Rancho was listed separately" and your answer "That is true."

Do you recall that?

A Yes.

Q That subpoena was received in 1973?

A I believe so, yes.

Q I want to show you 817-A, which is the form letter drafted by the Albuquerque board of realtors responding to anyone inquiring with regard to the sale of Rio Rancho property, is that correct?

A Yes.

Q That is undated.

817-B is a document of the Albuquerque board of realtors "I would suggest a form letter to be sent by all members of the Albuquerque board of realtors in response to persons inquiring about the sale of Rio Rancho property", is that correct?

A If they so choose, sir.

Q If they so choose.

817-B is dated May 16, 1974?

A That is correct.

Q Which would be after you had received the subpoena from the United States government?

A Yes.

Q The board of directors meeting or the minutes of the board of directors meeting, a portion of which was received, marked 817-C, is dated February 13, 1974, which also would have been after the board had received the subpoena?

A Yes.

Q Am I correct that the form letter -- did you testify yesterday that the form letter, which is 817-A, prepared by the board for use by the board, was also prepared in 1974 after receipt of the subpoena?

A After February 13th.

Q Now, did you testify yesterday that between 1971 to the end of 1973, in addition to the multiple listings which you actually received, you were receiving one to three letters a day from Rio Rancho property owners, is that correct?

A That's correct.

Q Now, that would come out to -- three letters a day over a three-year period, that would come out to about 2340 letters.

Would you accept that mathematics?

A I haven't computed it.

Q Then did you testify that beginning at the end of 19 -- by the end of 1973 the number of inquiries increased to up to five a day?

A Yes.

Q Did you produce folders marked 1800-A and 1800-B consisting of letters of the type which you received with the frequency with which you testified, is that correct?

A Yes.

Q Am I correct that the letters there by date run from July 1973 to approximately November 1974?

A This may not be the complete file. This is just what we had in file at the time.

Q I am only talking about those letters.

Am I correct that those letters run from July 1973 to or about November 1974, September 1974, a period of about fifteen months?

A Yes. There are some in September.

Q Am I correct that there are 173 letters in those two files?

A I haven't counted them.

Q You have testified that the letters contained in these two folders, 1800-A and 1800-B, comprise only a portion of the letters you received since you were throwing away some of the letters you received, is that correct?

A That is correct.

Q If you received letters in July of 1973, did you just pick at random certain letters to throw away?

A No, the secretaries periodically would purge files and we had more than one secretary handling the letters.

Q The secretary was purging files and she had a file for July of 1973, would she throw away some of the July 1973 letters and keep others?

A She could possibly have done that.

Q She would go into August of '73 and she would throw some of the August of '73 letters and keep some of the others?

A She could have.

Q The same would be true for the months between July of '73 and September of '74 as represented in this file?

A She could have.

Q It was sort of a random destruction policy?

A Yes.

Q She just didn't go and take the July folder and throw it away, is that your testimony?

A We didn't keep the letters by month. We just kept the letters in one large file.

Q So then they would go into the one large file and at random throw some away and keep others, is that right?

A They weren't filed by month or by date. They were just stuck in the large file.

Q They would just go in and throw some away and keep others?

A Very possibly, yes.

Q That must have happened, isn't that right, on your testimony?

A It could have, yes.

Q You have 173 here and you say you were receiving one to three for three years and five thereafter, did you not so testify?

A I said up to five. I did not say five a day.

Q Up to five.

Now, directing your attention to the 690 multiple listings for Rio Rancho property that you testified about, do you recall that?

A Yes.

Q Do you know at what price the particular items submitted for multiple listings were quoted for sale?

A I do not.

Q Do you know whether terms, do you know what

I mean by terms?

A Yes.

Q That is paying over a period of years?

A Yes.

Q Do you know whether the multiple listings with regard to Rio Rancho property offered terms as a part of the offer of sale?

A They could have.

Q Do you know whether they did?

A Some may have. Some may not have.

Q Do you know whether any did to your own knowledge?

A I am sure some did, yes.

Q You are aware of that to your own knowledge?

A Yes.

Q What percentage of them offered terms?

A I do not know.

Q Was it fifty percent?

A I do not know.

Q Was it eighty percent?

A I haven't computed it. I haven't had an occasion to check into the percentage of the ones that did and did not.

Q Now, is it the person who wishes to sell who requests multiple listing?

A They could request it of the broker, yes.

Q Can the broker himself determine that a property should be multiple listed?

A It has to be okayed by the seller of the property.

Q It has to be okayed by the seller of the property. So a person who goes to a broker and asks to sell property must agree to a multiple listing?

A Yes.

Q That can be suggested by the seller or it can be recommended by the broker, but it must be agreed to by the seller?

A By both parties.

Q Do you know whether the properties listed for multiple listing explained the exchange rate?

A Pardon me?

Q Do you know whether the multiple listings of properties listed for multiple listing explained the exchange right?

A The exchange right was explained not in detail, but it was explained on some of the listings.

Q On some of the listings.

Do you know what percentage?

A No, I do not. I had no occasion to compute it.

Q When a broker takes a property for multiple listing, am I correct that he is paid a fee of $15 by the person who owns the property and wants to sell it?

A You are incorrect.

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Q Is he paid any fee?

A The seller?

Q The broker.

A The broker pays a fee, yes, to process the listing.

Q Is the broker paid a fee by the potential seller when he accepts the property for sale?

A He is not.

Q Wasn't Mr. Heins paid $50?

A Mr. Heins was the exception.

Q He handled 400 of the 490 listings in the first instance, didn't he?

A Yes.

Q He was paid $50 by each potential seller?

A That's correct.

Q Now, when the broker submits the piece of land to the Board of Realtors for multiple listing, does the broker pay the Board of Realtors anything?

A They do.

Q What do they pay?

A The price varies. It will vary between six and $10.

Q One other question: What is the subscription price that the Board of Realtors pays for its listing?

A For each sheet?

Q For each subscriber per sheet.

A It varies between three and six cents.

Q Three and six cents per sheet. What was the gross revenue of the Board of Realtors in 1975?

A I do not know.

Q Can you approximate it?

A No.

Q Would it have run as high as a million dollars?

A Pardon me?

Q Would it have run as high as a million dollars?

A The revenue of the board? No.

Q After the board receives a property for multiple listing, it places it on a multiple listing list, is that correct?

A Yes.

Q It distributes that multiple listing list to its members?

A Yes.

Q Then what does the individual realtor do with the multiple listing list?

A The list that you are speaking of is merely an advance sheet to say that a listing is in process. After the listing has actually been sent to a broker, then the broker would file that either by price or category of listing and geographic location, however they filed it. Each one of them had their own filing system.

Q They filed it in their files in their office?

A That's correct.

Q To your knowledge, did any realtor go out and make affirmative attempts to sell Rio Rancho land which was multiply listed?

A I don't know how they ran their office. My business was with the board office.

Q Do you know if they -- did you ever see any advertisements in local Albuquerque newspapers saying, we have Rio Rancho land for sale; please inquire?

A No.

Q As a matter of practice in your experience as a realtor, does a real estate agent spend his time on exclusive listings or on multiple listings?

A I would like to correct a statement you made. I am not a realtor. I am an employee of the Board of Realtors.

Q You have knowledge of the real estate industry in Albuquerque, do you not?

A Yes.

Q You have knowledge of practices engaged in by realtors in the Albuquerque area?

A Yes.

Q Am I not correct that realtors as a matter of practice pay attention to exclusive listings as opposed to multiple listings?

A Not necessarily in our board. Our cross listings or listings listed by one office and sold by another office exceed 60 per cent.

Q Can you think of any effort made by any individual realtor to affirmatively go out and sell or attempt to sell Rio Rancho land which was multiply listed?

A I do not know that they did or did not.

MR. FLEMING: I have nothing further.

CROSS EXAMINATION

BY MR. ARISOHN:

Q Mr. Williams, do you recall yesterday testifying that in Albuquerque the people who sell real estate are real estate brokers and real estate salesmen?

A Yes.

Q And that only a portion of the real estate brokers and real estate salesmen are realtors?

A That's correct.

Q That only realtors are members of the Board of Realtors?

A That's correct.

Q Taking the category of real estate salesmen and real estate brokers, how many real estate brokers and salesmen, whether or not they are realtors, how many real estate brokers and real estate salesmen are there in Albuquerque?

A Affiliated with the board or the total?

Q Total.

A Real estate salesmen and brokers, approximately 2,000 in the city of Albuquerque.

Q A portion of those are members of the board, is that correct?

A Approximately 1500.

Q Of those 1500, you have what you call realtors and a category called associate realtors. I correct that -- the associate realtors are realtors who work for other realtors?

A That's correct.

Q Limiting your answer only to realtors, not associate realtors, how many realtors are there in Albuquerque?

A In excess of 400.

Q The remaining real estate brokers and real estate salesmen who are not members of the board are, I take it, what you call individuals?

A Yes.

Q How many individuals are there in Albuquerque?

A Approximately 500.

Q I take it that you know of certain of those 500 individuals who have a successful real estate practice in Albuquerque?

A I do not.

Q You do not?

A I do not. My association in the real estate business was with realtor members of the board.

Q You have never had any dealings --

A Not knowingly.

Q Not knowingly.

Of the 425 realtors who are members of the Albuquerque Board of Realtors, am I correct that less than 400 are members of the Multiple Listing Service?

A Yes.

Q How many of the 400 are members of the Multiple Listing Service?

A Somewhere in excess of 300.

Q Am I also correct, Mr. Williams, that of those 300 who are members of the Multiple Listing Service there are some who do not buy or sell real estate?

A I don't know that they don't.

Q For example, are banks members of the Multiple Listing Service?

A Yes.

Q Are appraisers members of the Multiple Listing Service?

A Yes.

Q To your knowledge, do banks and appraisers buy or sell real estate?

A They could as long as they have a broker's license, either one of them.

Q Are there other members of the Multiple Listing Service than banks and appraisers who are not real estate brokers or salesmen?

A They couldn't be a member of the Multiple Listing Service unless they were a broker and a broker has the ability to buy or sell real estate. Whether they do as a practice or not, I don't know.

T2A.AM Q Do you know why banks subscribe to the listing of the Multiple Listing Service?

A I am sure they have various reasons, possibly for comparable information.

Q The same thing for appraisers?

A Yes.

Q Am I correct, Mr. Williams, that the way the Multiple Listing Service works is that when a member of the Multiple Listing Service obtains a listing from a seller, the member prepares the listing and forwards it to the Albuquerque Board of Realtors and that the Albuquerque Board of Realtors then makes copies of the listing and distributes that listing to those members who subscribe to that category?

A Not verbatim, not exactly. The information is gleaned from the listing that's supplied to the Board of Realtors. It is gathered from that listing and reproduced in another format.

Q Does the Albuquerque Board of Realtors then have its own multiple listing form?

A Yes.

Q Let me show you what has been previously marked Defendants' Exhibit CQ for identification and ask you whether this is a sample of the Albuquerque Board of Realtors' multiple listing form?

A It is the form, yes.

MR. ARISOHN: I offer it.

MR. DEVORKIN: May we just have a moment, your Honor?

(Pause.)

MR. DEVORKIN: Your Honor, may we have a side bar on this document?

THE COURT: Sure.

(At the side bar.)

THE COURT: Yes.

MR. DEVORKIN: CQ for identification is a document which is taped together with something else underneath it which appears to be part of the form but I can't tell if there was a larger part.

MR. ARISOHN: CQ for identification was provided to us, Mr. Devorkin, by your office in a package of material that you gave us with Mr. Switt's material. We tried to offer it through Mrs. Switt and we decided not to offer it through Mrs. Switt or Mr. Switt, whoever the witness was.

MR. DEVORKIN: That is why I don't think it is proper for this witness. If he has a blank form, your Honor, but I don't think a document can come in, as it is constituted there, through this witness.

MR. ARISOHN: He just testified these forms were prepared in his office.

MR. DEVORKIN: As a blank form, as a completed form of the document I don't have any problem.

THE COURT: Do you have a blank form?

MR. DEVORKIN: I am thinking for a second.

THE COURT: He doesn't.

MR. DEVORKIN: I don't know of a blank form that I have, your Honor. Maybe my colleagues know.

THE COURT: Do you have one?

MR. KAUFMAN: Not that I know of.

THE COURT: I will let him testify this is the form that is used.

MS. HYNES: Can it be offered then, your Honor, without the writing?

THE COURT: How can you do it?

MR. DEVORKIN: We can try to substitute it.

THE COURT: What difference does it make?

MR. DEVORKIN: They couldn't get it in through Switt.

THE COURT: This is the form. This is the only ones he's got. If you have got one, give it to him. If you don't have one, I will let that one in.

MS. HYNES: We will try to substitute it with a blank form.

(In open court.)

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit CQ received in evidence.)

BY MR. ARISOHN:

Q Am I correct, Mr. Williams, that the information which ends up being on this form is forwarded to the Albuquerque Board of Realtors office by the member of the Albuquerque board who takes the listing from the seller?

A It's supposed to be, yes.

Q And that your office then enters that information on this form from the information provided to your office by the member realtor?

A The member enters the information on that form. We use that information and enter it on another form.

Q This form is on file in the office of the Albuquerque Board of Realtors, am I correct?

A Yes.

MR. DEVORKIN: This particular document or the form?

Q Forms such as this, what was your testimony?

A Yes, the only thing I testified to is that is the format.

Q And that the description of the property insofar as its location is concerned is information which the member realtor obtains from the seller?

A Yes.

Q And the size of the property similarly is obtained from the seller by the member realtor?

A Or measured or got from plat maps or what have you.

Q The same is true with respect to restrictions and other descriptive items with respect to the property, am I correct?

A It can be supplied by the seller or it can be researched by the broker.

Q Now, I take it that the Multiple Listing Service is given the opportunity to list the property for a specified period of time, that period of time being specified by the seller, am I correct?

A Yes, the seller and the broker determine the term of the contract.

Q That period of time can be anything from 90 days up to a year?

A The period of time can be from one hour to any given period of time as long as there is a beginning date and an ending date of the contract.

Q That is something which is agreed upon between the seller and the member realtor?

A That's correct.

Q Is a 90 day listing the type of listing which is most common to your knowledge?

A Yes.

Q Isn't it also a fact that when a 90 day listing expires the listing is renewed for another 90 day period?

A Not necessarily. It doesn't have to be. It either can or cannot be.

Q In your experience has that ever happened?

A It has happened.

MR. DEVORKIN: Are we talking about vacant land, residential, commercial or everything?

Q Let's talk about everything first. In general is it your experience that when there is a 90 day listing, that 90 day listing would be renewed or could be renewed?

A It can be. That is at the option of the seller.

Q Has it been your experience with respect to all categories that that has happened?

A It has happened, yes.

Q So that when you testified yesterday that during the period 1971 to 1973 there were 690 listings of vacant land for Rio Rancho, that included, did it not, those listings during that period which had been renewed?

A They can be renewed two ways. A new contract can be written or that particular contract aan be extended by the seller in writing. Consequently, the listing number remains the same. A new listing number is not assigned.

Q When there is a renewal, is there a new listing number?

A If it is a whole new contract, yes. If it is extended, no.

Q So that where there is a renewal and a new contract number, that would have been included in the 690 figure -- strike that.

The 690 figure I take it, then, did include certain contracts which in effect were renewals which got new contract numbers?

A It could have been, yes.

Q Do you have any idea how many?

A No, sir; I had no reason to count them.

Q Going to the right side of Exhibit CQ in evidence, there is an area in the document which is called "total price" with a blank.

I take it that that blank represents the total selling price that the seller requests the member realtor to list the property at, is that correct?

A Yes.

Q Am I correct, Mr. Williams, that the member realtor would be ethically bound to advise the seller as to what the realtor's belief was as to the fair market value of the property?

MR. DEVORKIN: Objected to.

THE COURT: Overruled.

A Yes.

Q By the way, you testified on cross examination by Mr. Fleming that occasionally the listing included information about the exchange. Do you recall that?

A Yes.

Q Would you show me where on the listing that would be included?

A This section here. If it contained it, it would be contained normally speaking right there (indicating).

Q Where it says improvements and remarks?

A If it included it.

Q Also included in that space under improvements and remarks would be whether there was tital insurance.

A I believe there is another area for title insurance if you look at the contract.

Q And whether there was a commission on the sale?

A There is another area for the commission also.

Q And what the sales tax was on the sale of the property?

A There is another area for the sales tax on the commission on the sale of the property.

Q And whether there were any escrow fees?

A Escrow fees, I believe, are not contained in the remarks section either.

Q Whether there were any attorneys' fees?

A Attorneys' fees and those type of fees are included in a closing statement from the title company and not on the listing.

Q All those things that I have just mentioned are included in the area designated improvements and remarks?

A They are not necessarily. They can be included.

Q Are they listed there?

MR. DEVORKIN: I object. We are not talking about the form. We are talking about what information was put on by somebody else on this document and I object.

THE COURT: Objection sustained.

Q Let me ask you --

THE COURT: This is used solely as an indication of what the form was.

MR. ARISOHN: I understand, your Honor.

THE WITNESS: This particular form --

THE COURT: Wait, wait. The question has been ruled out.

(Continued on next page.)

Q Directing your attention to prior to the time that you left the Albuquerque board of realtors, which was November 1976, you testified that there were some six or so categories in which listings were kept, am I correct?

A At what time prior to the time I left?

Q Say prior to 1974.

A Prior to 1974, yes, there were different categories.

Q One of those categories was called west residential?

A That's correct.

Q And there was another category called rural residential, am I correct?

A That's correct.

Q Am I correct also that the rural residential category was a category which included listings of single family residential structures outside the city of Albuquerque, am I correct?

A That's correct.

Q Am I also correct that Rio Rancho listings for single family residential houses was within the west residential category and not within the rural residential category?

A That's correct.

Q I believe you testified yesterday that sometime in 1974 the vacant land category was broken down into three separate categories one of which was Rio Rancho vacant land, is that what you testified to?

A That's correct.

Q And that immediately after the Rio Rancho vacant land separate category was created, some twenty-two realtors subscribed to the Rio Rancho vacant land listing?

A That's correct.

Q And that within a short period of time that was decreased to some two or three?

A That is also correct.

Q Is it not a fact, Mr. Williams, that one of the purposes of the multiple listings service is to provide a seller with a wide dissemination among a lot of realtors of his listing?

A That's correct.

Q So that the purpose of the multiple listing service is in effect an advertising mechanism, is it not?

A Not necessarily. It's an information service of the board.

Q The whole point of the multiple listing service is, if I am not mistaken, that the listings to one particular realtor and that realtor supplies it to a central source and that central source then distributes that listing among a large number of realtors, isn't that typically what happens?

A That's correct.

Q So that if any individual is interested in buying land would go into any one of a number, a large number of realtors he would be able to get listings from a large number of particular brokers, am I not correct?

A Depending on what that broker specialized in. If he did in fact specialize. He might have to go to more than one broker to find the type of property he wants.

Q You would agree, wouldn't you, that if only two of the members of the Albuquerque board of realtors were listing Rio Rancho vacant land that Rio Rancho vacant land was not receiving the same wide dissemination as other land or other listings that the Albuquerque board of realtors had?

A That's true.

Q You testified that during the period 1971 through the end of 1973 the multiple listings service had some 690 listings for Rio Rancho vacant land and that this morning you testified that certain number of those, you don't know how many, were what you called renewals where there was a new contract but for the same piece of vacant land; correct?

A No, I said they could have been renewed. I did not say they were renewed.

Q You said, if I am not mistaken, that of the 690, you don't know how many, some of them would have been a multiple listing of the same piece of land?

A No, I said they could have been.

Q You don't know that some were?

A I do not know if they were or were not. I said they could have been. The possibility exists.

Q You also testified yesterday that 400 of those 690 listings were with one particular broker in Albuquerque and that one particular broker had, in fact, solicited listings for his office?

A Yes.

Q Now, would you agree that -- first of all, I take it that pre-1971 and post-1973 you have no information on the number of listings and the number of sales of Rio Rancho land?

A Not specifically, no.

Q Would you agree with me that if there were twenty sales of Rio Rancho land during the period 1971 to 1973 and there were some 690 listings, that the success rate of the multiple listings service in selling Rio Rancho vacant land was about three percent?

A I haven't computed that. I don't know. If that is the way it works out --

MR. DEVORKIN: I will accept Mr. Arisohn's figure.

MR. ARISOHN: Thank you, Mr. Devorkin.

Q Would you agree if you eliminated the 400 listings which were solicited by one of the brokers in Albuquerque that you would have twenty sales over 290 listings which would be about seven percent success rate, am I correct?

A If you eliminated the 400, but they were still included in the multiple listing service.

Q If you eliminated those which were solicited?

A Yes.

Q The success rate of selling Rio Rancho vacant land would be about seven percent, am I correct?

A Yes, possibly.

Q Do you have any idea -- strike that.

Isn't it a fact, Mr. Williams, that in 1975 the Albuquerque board of realtors had total listings, that is in all categories, of about 14,000?

A Not quite 14,000. It was a little over 13,800.

MR. DEVORKIN: We are starting to compare apples and oranges.

MR. ARISOHN: I will make them all apples in one second.

THE COURT: He says he wants to make them apples.

Q Am I also correct, in your experience, half of the listings of all listings are listings for vacant land?

A Yes.

Q Am I correct that in 1975 there were approximately 7,000 listings for vacant land?

A Yes.

Q Am I also correct that in 1975 there were 389 units of vacant land sold through the multiple listings service?

A Yes, units.

Q Would you agree that the success rate for selling vacant land overall in 1975 would be 389 sales over approximately 7,000 listings which would be a success rate of about 5-1/2 percent?

A Yes.

Q So that the success in selling Rio Rancho vacant land was in fact at least around, if you take the 690 figure and better if you take the 200 figure, 290 figure of selling vacant land all together?

MR. DEVORKIN: Now I object.

THE COURT: Sustained. Strike all the testimony regarding comparisons. If you want him to compare the time period, I will take it, but don't give me a '73 time period for Rio Rancho and give me a '75 time period for vacant land elsewhere.

Conditions can change in two years.

Q Do you know how many land listings there are now for Rio Rancho vacant land?

A Yes.

Q How many?

A As of about a day ago there were fifty.

Q Fifty listings. Am I correct that the success rate of selling vacant land overall during the period 1971 through 1975 was approximately what it was in 1975?

A If I can clarify my answer --

Q My question is --

THE COURT: Strike the question because I don't understand it. Neither does the witness.

Q You testified that the success rate --

THE COURT: I told you that I will take the comparable period for sales of other vacant land as is represented by the 690 figure in 1970. That is all I will take from you on that point.

Q Do you know during the period 1971 to 1973 what the success rate for the sale of vacant land listed with the multiple listing service in Albuquerque was overall?

A I already testified to that, 690 opposed to approximately 20.

Q I am talking about the success rate of selling vacant land all together.

A I do not.

MR. ARISOHN: I have no further questions.

THE COURT: Redirect.

MR. DEVORKIN: May I just have a moment, your Honor?

(Pause)

REDIRECT EXAMINATION

XXX BY MR. DEVORKIN:

Q Mr. Williams, you have testified that there were about 690 listings between '71 and '73 for Rio Rancho land, is that correct?

A That's right.

Q You were also getting about one to three letters per day requesting information about selling Rio Rancho land.

A Correct.

Q After 1974 when you started using these letters, you still had listings for Rio Rancho land?

A Yes.

MR. FLEMING: That was asked on direct, if your Honor please.

THE COURT: Sustained.

Q Did the listings decrease after that?

MR. FLEMING: Object to it.

THE COURT: Overruled.

Q After you started using these form letters, did the people who came in and listed their Rio Rancho land with the board decrease?

A Yes.

Q In fact, in 1974 about how many sales of Rio Rancho land through the board were there?

A I think through the 16th of December there were an additional two.

Q From January 1, '74 through December '74?

A Yes.

Q You testified I believe on cross that Mr.

Heins was to your knowledge writing people asking them if they wanted to list their land at Rio Rancho?

A Yes.

Q He was charging them $50 in advance to list their land; right?

A At the outset he was charging twenty-five and he increased it to fifty, that's correct.

Q To list it in the first place the people he was writing would have had to pay him money in advance?

A That's correct.

Q Are you aware that Rio Rancho was referring people to Mr. Heins during that period of time?

A I was not.

MR. FLEMING: Objection .

MR. ARKIN: If your Honor please, the evidence is exactly to the contrary.

THE COURT: It is perfectly obvious if the witness says no, that does not mean any statement of fact contained in the government's question is true any more than when you phrase statements of fact which are denied by the witness.

MR. DEVORKIN: I offer Government's Exhibit 170-C.

VOIR DIRE EXAMINATION

BY MR. ARISOHN:

Q You testified yesterday that Mr. Heins was no longer a member of the Albuquerque board of realtors in 1974, am I correct?

A That's correct.

MR. ARISOHN: I object to this, your Honor.

BY MR. DEVORKIN:

Q What date in 1974?

A The seventh month of '74.

MR. ARISOHN: I object to this anyway on relevance and hearsay, your Honor.

THE COURT: Let me see it.

(Pause)

THE COURT: Objection sustained.

MR. DEVORKIN: There is no dispute that it is authentic if that is the problem.

THE COURT: I said objection sustained.

BY MR. DEVORKIN:

Q Do you recall Mr. Arisohn or Mr. Fleming asking you whether a realtor was ethically bound to tell the buyer what he thought the fair market value of the property was before entering into an agreement to list the property with the seller?

A The first question I had --

Q I am sorry, withdrawn.

Do you recall him asking you whether a realtor was ethically bound to tell the seller that he was entering into an agreement with what he thought the fair market value of the property was before entering into that agreement?

A The first time I was asked that question I was asked if it was prescribed in the Code of Ethics that he was ethically bound. This is not true. It is not specifically written out in the Code of Ethics that he is ethically bound to tell the seller what the value of the property is.

It is not written out. Ethically, yes, he should tell -- suggest to the seller what the price of the property should be.

Q Would it be ethical for a realtor to enter into an agreement with a seller to sell Rio Rancho land at the price Rio Rancho was selling the land at?

A At that price?

Q Yes.

A That depends on what the selling broker and the seller of the property agree to.

Q I understand that, but in terms of what the realtor must tell the seller about fair market value.

Would it be unethical for the realtor to agree to list Rio Rancho land for the same price Rio Rancho was selling the land nationally?

A No.

THE COURT: Not if the broker thought it was a fair price.

Q Or if he didn't know whether it was or it wasn't, would it be unethical --

THE COURT: That is too speculative. Next question.

Q Take the first part of the question.

THE COURT: Forget it.

Q Do you know whether Mr. Heins' listings were at the prices Rio Rancho was selling their land nationally?

A I do not know what price Mr. Heins listed his properties. I had no occasion to check on it.

Q You don't know whether it was less than Rio Rancho or the same as Rio Rancho?

A No, I don't.

Q Mr. Fleming asked you yesterday if you recalled about the financial interests of the members of the board of directors of the board of realtors, do you recall that?

A Yes, I do.

Q He asked you whether or not they had financial interests in property in the Albuquerque area, do you recall that?

A Yes.

Q He asked you whether they were influential and powerful in the real estate industry in Albuquerque?

A Yes, I recall that.

Q The members of the board of realtors, do they necessarily have land holdings in the city of Albuquerque?

A They can have or they could not have. I would have to have a financial statement on each one of them to know what their assets were before I would have that knowledge. They could or could not have.

Q Do you have any idea of how many of the 1500 members of the board of realtors actually had their own land in Albuquerque they are trying to sell?

A No. You mean personally own?

Q Yes.

A I would say a very small amount of it.

Q Mr. Fleming also asked you about whether the board changed the listing categories after receiving a subpoena from the Federal Trade Commission; do you recall that?

A Yes.

Q Do you recall the date of the Federal Trade Commission subpoena?

MR. FLEMING: I object to that. I never said that.

MR. DEVORKIN: It is in his question. It says Commission.

THE COURT: You left the inference with the jury that they changed their practice regarding their practice after serving the subpoena.

MR. FLEMING: By the United States government.

THE COURT: That is what he is asking about.

MR. DEVORKIN: The testimony says Commission.

THE COURT: He didn't say Commission. He said United States government.

Mr. Devorkin --

MR. DEVORKIN: I won't argue with you about it.

THE COURT: Thank you very much. After seven weeks I get you to say that.

Q Showing you Government's Exhibit 3552-D for identification, does this refresh your recollection about when the subpoena was actually issued?

A Yes.

Q When was it actually issued?

A August 9, 1973.

Q That was six months before the change, is that correct?

A Correct.

Q The board didn't make the change right after they received the subpoena, did they?

MR. ARKIN: That is a suggestive and leading question, your Honor, and I object.

THE COURT: He never did say that.

Sustained.

Q Six months later he change was made.

A Yes, approximately.

Q It was actually on February 13th, correct?

THE COURT: He has already testified to that effect.

Q Who initiated the request for the form letters for your members to use, the board of directors or your members?

A For the members to use?

Q Yes.

A It was at the request of the members.

Q The members didn't receive a subpoena from the goverrment, did they?

MR. ARKIN: Objection .

THE COURT: Argumentative. Sustained.

Q Did they receive a subpoena to your knowledge?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Did the members give you any reasons why they wanted the form letters?

MR. ARKIN: Objection.

THE COURT: Sustained. This witness testified yesterday on direct that he issued it at the request of members.

Q Did the board of directors of the staff of the board of realtors prepare the form letter?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q After the letter was distributed to the members of the board of realtors, that is after the board of directors had approved it and it was distributed to all the members including RR, did anybody from Rio Rancho or RR ever complain to you personally about using such a letter?

MR. ARKIN: Objection.

A No.

THE COURT: Let's go on to something else.

Q You said in response to one of the questions on cross examination that the amount of land sold by cross listings was sixty percent.

Will you explain what you meant?

A Listed by one office and sold by another office, yes, it was in excess of sixty percent.

Q That applies to vacant land?

A It applies to all sales.

Q Sixty percent of all the listings were sold by a different broker than listed with, is that fair?

A That is correct.

MR. FLEMING: I object.

THE COURT: That is what he testified to.

MR. FLEMING: Not all listings. He is talking about percentage of sales.

THE COURT: No, this question goes to the question you put on cross examination which you posed the question to the witness that wasn't it true that most sales are done by brokers who have exclusives.

The witness came back, not true at Albuquerque. In Albuquerque sixty percent of sales at Albuquerque are cross listings, not exclusives.

MR. FLEMING: I agree, your Honor. My objection was the distinction between selling sixty percent of listings and -- in other words, applying the figue sixty percent to all listings and applying the sixty percent to all sales and the testimony is sixty percent of sales.

THE COURT: Sales.

MR. DEVORKIN: Yes.

Q Sixty percent of the sales through the multiple-- through the board of realtors were through brokers who were not actually listing it in the first place?

A That is right.

Q With respect to vacant land, would the commission that a broker received on selling vacant land normally be any different for Rio Rancho vacant land than it would be for any other vacant land?

A No.

Q The commission rate structure would be the same no matter where it was being sold?

A Generally speaking, yes.

Q Mr. Arisohn or Mr. Fleming asked you about your knowledge of affirmative efforts to sell Rio Rancho land; do you recall that?

A Yes.

Q Do you have any knowledge of affirmative efforts by members of the board of realtors to sell any vacant land?

A No.

MR. DEVORKIN: Your Honor, is all the testimony about success rates stricken?

THE COURT: Yes.

MR. DEVORKIN: I have no further questions.

THE COURT: You may step down.

(Witness excused)

MR. KALEY: Your Honor, the government calls Mr. Kaufman.

MS. HYNES: Prior to calling Mr. Kaufman, the government offers Exhibit 657.

MR. FLEMING: Your Honor, we object. There is no witness on the stand to cross examine.

MS. HYNES: Your Honor, may we have a side bar.

THE COURT: Let me see it.

(Pause)

end

3A.AM

(At the side bar.)

THE COURT: Who is the objectant here?

MR. SPRIZZO: Mr. Fleming.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: Back on the record.

What is your objection to 657?

MR. FLEMING: The objection, your Honor, is that there is no witness here to cross examine. We understand he is on the will call list. It is just offering something on a vacuum that we cannot combat.

THE COURT: Yes. But I thought there was a general proposal to submit documents which could have come in through a custodian as a business record and all objections were made prior to trial, and this is not one of them.

MS. HYNES: Exactly, your Honor.

MR. FLEMING: I am in bad shape on the whole pretrial.

THE COURT: Who is in good shape?

MR. ARKIN: Ms. Dacey is.

MS. DACEY: I think, your Honor, it does not appear on this list because we produced this document pursuant to a trial subpoena about two weeks ago, so

I don't believe that we made a statement whether we objected to it or not.

THE COURT: Is there an objection on authenticity?

MR. ARKIN: There is no authenticity objection, your Honor. The objection is that Mr. Lurie is on the will call list and I think Mr. Colegrove is on the may call list.

THE COURT: Are you going to call Lurie?

MS. HYNES: I don't think we have to call Lurie.

THE COURT: That isn't the question put to you.

MS. HYNES: We are evaluating that.

THE COURT: Why don't you hold this until you make up your mind.

MS. HYNES: This memo is not written by Mr. Lurie. He could add nothing. It is an internal corporate document.

THE COURT: After you decide whether you are going to call Mr. Lurie or not, I will then rule on the document.

(In open court.)

THE COURT: Maybe we ought to have a morning recess and then we will start with the witness.

MS. HYNES: Your Honor, can we give to the jury the documents we mentioned yesterday?

THE COURT: Yes.

(Recess.)

(In open court; jury present.)

XX SAMUEL A. KAUFMAN, called as a witness by the government, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MR. KALEY:

Q Mr. Kaufman, are you any relation to Assistant U.S. Attorney Kaufman?

A No.

Q Where do you live, sir?

A 184 East 162nd Street, the Bronx.

Q And how old are you?

A Pardon me?

Q How old are you, sir?

A 81 years.

Q Are you married, Mr. Kaufman?

A Widower.

Q Are you presently employed?

A No. I'm retired.

Q What type of work did you do before you retired, sir?

A I was a newspaperman until March of 1955, when the Brooklyn Eagle -- I was employed by the Brooklyn Eagle -- when that paper closed up.

Q Have you done any type of work since then?

A Since then I have at times done freelance editing and proofreading for book publishers, but not recently.

Q Do you now own any lots at Rio Rancho, Mr. Kaufman?

A No.

Q Did you at one time own some lots at Rio Rancho?

A I did own one lot.

Q When did you purchase that property at Rio Rancho, sir?

A That was in July 25, 1968.

Q Is that when you first had contact with Rio Rancho?

A That was it.

Q What was the nature of your first contact with Rio Rancho?

A I received in the mail, I received an invitation to a dinner at a hotel in a midtown hotel.

Q Was your wife alive at that time, sir?

A She was, and she went with me to that dinner.

Q She attended that dinner with you?

A Yes.

Q Do you recall where that dinner was held?

A It was in midtown. It might have been the Commodore. I couldn't say for sure.

Q Did you see a film at that dinner?

A They did show a film.

Q Was there a person who gave a talk at that dinner?

A There was a person explaining it.

Q And did you buy any lots at that dinner?

A I bought a lot.

Q Mr. Kaufman, I am showing you Government's Exhibit marked 136-B, and ask you if that is your signature down at the bottom (indicating).

A It is.

Q And is that your wife's signature?

A Yes.

Q And this is the contract for the piece of property you purchased that evening?

A That's the purchase agreement.

Q Did you also take out insurance on your property?

A I believe so.

Q And that insurance was on your life?

A Yes.

Q And is that your signature there (indicating)?

A That is my signature.

Q And is that your wife's signature?

A That is my signature.

MR. KALEY: I offer 136-B.

THE COURT: Any objection?

MS. CROSS: No objection.

XXX (Government's Exhibit No. 136-B was received in evidence.)

MR. KALEY: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Mr. Kaley read from Government's Exhibit 136-B in evidence to the jury.)

Q Mr. Kaufman, showing you Government's Exhibit 136-B in evidence, do you see those initials there (indicating)?

A Yes.

Q Are they your initials?

A Yes.

Q And are they your wife's initials?

A That's correct.

Q And they appear after the paragraph that reads, "I/we acknowledge receipt of a copy of the restrictive covenants and the public report, offering statement or prospectus applicable to the lots."

A That's correct.

Q Mr. Kaufman, to the best of your recollection, at the time you placed your initials there, did you receive such a report?

A To the best of my recollection, I did not.

Q To the best of your recollection, did you or your wife ever receive such a report after, at any time thereafter?

A Not, not to the best of my recollection.

Q Do you recognize this document marked for identification Government's Exhibit 784 (handing)? Did you ever receive this?

A I don't recall -- I don't recall seeing it before.

Q Thank you.

MR. FLEMING: May I see that?

MR. KALEY: Yes (handing).

Q Mr. Kaufman, did there come a time when you attended another Rio Rancho sales dinner?

A That's correct.

Q And when was that, sir?

A I don't -- I don't have the date for it. It was shortly after the first time.

Q Did you attend that dinner with your wife?

A That I did.

Q And how were you invited to that dinner?

A It may have been by telephone, because I received a number of calls from those people by telephone.

(Continued on next page.)

Q Was that dinner basically the same as the first?

A It was very much the same as the first.

Q Do you recall who your sales person was who sold you your first piece of property?

A His name was Mr. Lawler.

Q Was he your sales person as well at the second dinner you attended?

A Yes.

Q Did you have any conversations with Mr. Lawler that evening?

A Yes, I did.

Q To the best of your recollection, could you relate what Mr. Lawler said to you?

A Yes.

It consisted of -- Mr. Lawler told me that he happened to have a piece of -- a lot adjoining mine and that it would be very advantageous for me to buy that because the two rounded out together would be more attractice and more saleable and more valuable.

Q Mr. Kaufman, for what purpose did you buy your first piece of property?

A As an investment in the hope of getting a profit.

Q Did there come a time when you made efforts to resell your lot at Rio Rancho?

A Yes.

Q And what efforts did you make, sir?

A I wrote to Rio Rancho asking them to buy it back.

THE COURT: Wait a second.

Did you buy the second lot?

THE WITNESS: I did not buy the second lot.

Q You wrote to Rio Rancho?

A Yes.

Q And asked them to buy back --

A To buy back that lot.

Q Showing you Government Exhibit 136-I for identification; is this the letter that you wrote to Rio Rancho (handing)?

A That it is, yes. That is a copy of it.

MR. KALEY: I offer 136-I, your Honor.

MS. CROSS: No objection, your Honor.

(Government Exhibit 136-I received in evidence)

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Q Mr. Kaufman, showing you Government Exhibit 136-H for identification, is this a copy of the letter you received responding to your letter from Rio Rancho?

(Handing).

A Yes, that it was.

MR. KALEY: Your Honor, I offer 136-H.

MS. CROSS: No objection.

(Government Exhibit 136-H received in evidence)

MR. KALEY: Your Honor, may I read from a portion of these exhibits?

THE COURT: Yes.

(Mr. Kaley read from Government Exhibit 136-I in evidence to the jury)

Q Mr. Kaufman, when you stated -- did you ever have any intention to relocate to New Mexico?

A No, I did not.

Q When you stated in your letter that now it would be impractical, was that fully accurate?

A It was not. I put that in by way of creating a sense of urgency so they would buy --

Q So that they would buy your property back?

A So that they would buy my property back.

(Mr. Kaley continued reading from Government's Exhibit 136-I in evidence to the jury)

(Mr. Kaley read from Government Exhibit 146-H in evidence to the jury)

Q Mr. Kaufman, did Rio Rancho -- they never bought your property back, I gather?

A They did not.

Q Did you make any other efforts to sell your property,sir?

A Shortly after that I received a letter from Rocky Mountain Auction, Land Auction Company inviting me to register my property and they would sell it for me.

Q Mr. Kaufman, showing you Exhibit 136-C marked for identification, is this a ocpy of the flier you received from Rocky Mountain?

A Yes.

Q Is that your handwriting, sir, that appears on the top?

A Yes.

Q Showing you Government Exhibit 136-D, is this a copy of a letter you also received in connection with the auction? (Handing).

A Yes, yes.

MR. KALEY: Your Honor, I offer 136-C and 136-D.

MS. CROSS: May I have a question, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q Mr. Kaufman, my name is Lee Cross.

Showing you Government Exhibit 136-C, there is some handwriting at the top which you say is yours; is that correct?

A Yes. That was a memo, yes.

Q Who did you write that note to?

A That was a memo addressed to my step-daughter, to whom I was going to show this to.

Q It was just to your step-daughter?

A Yes.

Q Who wrote the word "Note" there? Do you recognize that handwriting?

A I don't recall.

Q You don't know who wrote that?

A No, no.

Was it Mr. --

Q You don't know?

A No, I don't remember that.

MS. CROSS: Your Honor, we would object to the handwriting on this, but otherwise not.

MR. KALEY: Your Honor, we would agree to remove the word "Note" if that is what they are objecting to.

MS. CROSS: We object to all the handwriting.

MR. KALEY: That is his handwriting.

MS. CROSS: I know.

THE COURT: It is still not part of the testimony of the proof in this case, is it?

MR. KALEY: Fine. We will take off all the handwriting.

THE COURT: Objection to Government Exhibit 136-C is overruled.

MS. CROSS: We have no objection to Government Exhibit 136-D.

(Government Exhibits 136-C and 136-D, respectively, received in evidence)

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MR. KALEY: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

BY MR. KALEY:

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Q Mr. Kaufman, was your property sold at the auction?

A It was sold.

Q Showing you Defendants Exhibit ET already in evidence, do you recognize this as your purchase agreement for the property that was sold at the auction (handing)?

A That's correct.

Q Mr. Kaufman, at the time you listed your property at the auction, had you paid for it in full?

A It was paid for in full.

Q And how much did your property sell for at the auction?

A $550.

Q And of that amount of money, how much did you yourself receive?

A I received $490. That was -- the difference was the commission.

Q It sold for 550, less commission?

A $55 commission.

Q So you received $495?

A That's correct.

MR. KALEY: We have no further questions, your Honor.

CROSS EXAMINATION

XX BY MS. CROSS:

Q Mr. Kaufman, my name is Lee Cross, as I said.

Now, the Rocky Mountain Land Auction contacted you?

A I beg your pardon?

Q The Rocky Mountain Auction contacted you, isn't that correct?

A That's correct.

Q You didn't write to them initially?

A No. They wrote to me first.

Q They wrote to you and solicited you to sell your property at Rio Rancho, isn't that correct?

A That's correct.

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Q Now, the property that you bought at Rio Rancho was 1.15 acres in size, was it not?

A Yes.

Q It was more than an acre?

A More than an acre.

Q It was also a corner lot, was it not?

A I suppose so. It could have been. I never saw it.

Q Did you get a plat map after you bought your property?

A Yes, I did.

Q You got a map?

A Yes.

Q And that showed the location of your property?

A Yes.

Q Was your property on the corner on the plat that you received?

A I must confess I didn't pay much attention to it. I am sorry.

MS. CROSS: Your Honor, could I have this marked.

(Defendants Howard Friedman and Henry Hoffman Exhibit EW marked for identification)

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Q Mr. Kaufman, showing you what has been marked as Defendants Exhibit EW for identification, do you recognize this?

A As I say, I didn't pay much attention to it, but I did receive a map and this could be it.

MS. CROSS: Will the government agree that this is the map Mr. Kaufman brought to court?

MR. KALEY: Yes.

Q When you got the map was there a lot on the map marked?

A I believe there was.

Q Like that one in red?

A I believe there was.

Q Did they also list the number of your lot on the map?

A I believe they did.

Q Showing you what has been admitted in evidence as Government Exhibit 136-B, this is your purchase agreement?

A Yes.

Q And does this include the number of your unit, block and lot, Unit 10, Block 27, Lot 1-C?

A That it does.

Q Is that correct?

A That's correct.

Q Here --

A Is the same.

Q The numbers follow there?

A Yes.

MS. CROSS: Your Honor, I would move to admit Defendants Exhibit EW for identification.

MR. KALEY: We have no objection, your Honor.

(Defendants Howard Friedman and Henry Hoffman Exhibit EW received in evidence)

Q Showing you Defendants Exhibit EW, that indicates a corner lot that you had, does it not?

A It seems to, yes.

Q So that was a corner lot that you purchased --

A Well, now, oh, yes, it is a corner, that is right.

Q A corner lot of 1.15 acres, is that correct?

A That's correct, yes.

Q Now, after they solicited you for the Rocky Mountain Land Auction to sell your land, you sent a card back to them, did you not?

A I sent what back?

Q A card back to them, did you not?

A A card?

Q A card that listed your name and your address and some information.

A I believe -- that's right, yes. That is correct.

Q Showing you Government Exhibit 801-K, I would ask you if the card that is attached to that is the card that you filled out.

A That's correct.

Q And you filled out your name and your address and the unit, block and lot that you had to sell?

A That's correct.

Q Do you notice on this point here, designated minimum price?

A Yes.

Q Your designated minimum price for your acre, 1.15 acres was $500, is that correct?

A That's correct.

Q You sold the 1.15 acres at the auction, did you not?

A I did, yes.

Q The entire 1.15 acres?

A That's correct.

Q For $550 which was more than your minimum asking price?

A That's correct.

Q Did you know, Mr. Kaufman, that they had carried your lot at the auction as a half acre lot?

A I didn't know that.

Q You did not know that?

A No.

Q Did you know that they sold your lot for less than other half acres received at the auction?

MR. KALEY: Objection, your Honor.

THE COURT: Overruled.

A I did not know that.

Q You did not know that other half acre lots got more in price than your 1.15 acres did?

A I did not know that.

Q Showing you again Government's Exhibit 801-K, there is writing on that that says one half acre.

A Oh.

THE COURT: 801-K?

MS. CROSS: 801-K.

Q Did you know that there was half acre written on your card?

A No.

Q So you did not know that they carried it, listed it and sold it as a half acre lot?

A No.

Q Now, you sold your land to a man named Henry Armijo; is that correct?

A Yes.

Q He lived in Albuquerque, New Mexico.

A That's correct.

Q You indicated that you attempted to sell your lot, is that correct?

A Yes.

Q You sent a letter to Rio Rancho and asked them if they would buy your land back from you, is that correct?

A That's correct.

Q Is that correct?

A That's correct.

Q When you wrote them the letter you indicated to them, showing you Government's Exhibit 136-I, you said that it would be pointless for you to build a new home in New Mexico following the death of your wife; is that correct?

A That's correct, yes.

Q That was a little white lie you told them to get them more interested in buying your property back.

A That is true.

Q They wrote you a letter back again and in this letter they told you that they didn't buy back property, isn't that correct?

A That's correct.

Q And that they understood that some people had been successful in selling their lots by advertising in their home town newspaper, is that correct?

A That's correct.

Q You didn't advertise your lots in the home town newspaper, did you?

A I did not.

Q They said you also could possibly arrange a sale through a relative or friend.

A Yes.

Q You didn't try to arrange a sale through a relative or friend?

A No.

Q You didn't list your land with any brokers in Albuquerque, did you?

A No.

Q So, in fact, Mr. Kaufman, what you did as far as attempting to sell your property was write a letter to Rio Rancho.

A That's correct.

Q And then when you got that response from them you then listed it through the auction, is that correct?

A That's correct.

Q Your land was sold then at the auction?

A Yes.

Q And you got the deed back in the mail from the auctioneer, is that correct? I am sorry, you got the purchase agreement back in the mail.

A Yes, that's correct.

Q This purchase agreement was for the Lot 1, Block 27, Unit 10.

A That's correct.

Q That is your entire amount of property?

A That's correct.

Q For $550.

A Yes.

Q You signed this agreeing to sell it for $550?

A Yes.

Q Your whole amount?

A That's correct.

Q And am I correct that on this Defendants Exhibit ET there is no indication anywhere of the amount of land that you sold?

A I am sorry, I don't understand.

Q Defendants Exhibit ET, other than the

designation of Lot 1, Block 27, Unit 10, there is no indication of the amount of the acreage, is there?

A Oh, I see. No, I guess you are correct.

Q You thought they were getting the highest price they could for 1.15 acres, right?

A I assumed that was it.

Q You didn't know they had sold it as a half acre?

A No, I did not.

Q Now, when you signed your purchase agreement, you initialed that you had received the public property report, did you not?

A Yes.

Q That is in Government's Exhibit 136-B you initialed this paragraph that you had received a copy of the restrictive covenants, the public report, offering and prospectus, is that correct?

A Yes.

Q You read the contract before you signed it, didn't you?

A No.

Q You did not?

A No, I signed on the dotted line where Mr. Lawler indicated.

Q You have been a newspaper man for how many years?

A For a long time.

Q A long time?

A I should have known better.

Q You have covered a lot of different stories in your life.

A Yes.

Q You have read a lot?

A That's correct.

Q Do you read widely?

A Yes.

Q This was an agreement that you signed to pay $3495, is that correct?

A That's correct.

Q And you are saying that you signed there without ever having read that?

A That's correct.

Q You just put your initials there?

A Yes.

Q Just because someone told you to put your initials here?

A Yes.

Q Did you sign the contract without reading it too?

A Yes.

Q You never read any of it?

A I may at some time have read some of it, but not at the time I signed it.

Q You didn't read any of it when you signed it?

A I don't recall doing so, no.

Q You realized this was not an insubstantial amount of money you were spending, is that correct?

A That is true.

Q You were signing a contract agreeing to certain payments to be made, is that correct?

A That's correct.

Q And yet you never read any of this before you signed it?

A Not with real attention.

Q But you may have skimmed it?

A I may have skimmed it, but not with really concentrated attention as it should have been read.

Q Did you skim this paragraph here before you put your initials there that you acknowledged receipt of the copy of the restrictive covenants?

A I couldn't say for sure at this time.

Q You cannot recall -- you may have skimmed it?

A I may have.

Q You may have understood that you were acknowledging receipt of the offering statement here?

A I don't recall that.

Q You don't recall --

A I don't recall that coming to my full attention.

Q You don't recall whether or not it came to your full attention or you don't recall that it did?

A I recall that it probably did not.

Q You recall it probably did not?

A That's correct.

Q But you may have skimmed the contract before you signed it?

A I may have.

Q How much education do you have, Mr. Kaufman?

A Up to third year at Cornell.

Q Third year at Cornell. Three years college that is?

A Three years college.

MS. CROSS: I have no further questions.

MR. KALEY: Your Honor, may we have one moment?

THE COURT: Mr. Fleming wants to cross examine.

MR. KALEY: Excuse me, your Honor.

CROSS EXAMINATION

XXX

BY MR. FLEMING:

Q Mr. Kaufman, aside from this purchase of land at Rio Rancho on July 25, 1968, have you invested or purchased any other land?

A No.

Q Have you invested in the stock market?

A At one time years ago I owned some mutuals.

Q Mutual funds?

A Yes. That is a remote way of owning stocks I understand, but not directly. I have never directly bought any stocks.

Q Mutual funds is a security, isn't that right, you can buy and you can sell it?

A Yes.

Q When did you invest in a mutual fund?

A I couldn't give you any specific information about it at this time.

Q Was it in --

A I have no records now.

Q Do you have a recollection?

A I have sold them and that was it. It was out of my mind and I couldn't tell you anything specific about them at this time.

Q Did you make a lot of money on them?

A Some.

Q How did you come out overall?

A I beg your pardon?

Q How did you come out overall?

A I made a few hundred dollars.

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Q You can't recall what decade of this century you made that investment?

A I don't know. It may have been in 1960, I don't recall.

Q Those are your only investments, mutual funds and this acreage at Rio Rancho, is that correct?

A I beg your pardon?

Q Those are the only things you purchased for investment, the mutual funds and the land in Rio Rancho?

A Well, at certain times savings certificates, savings bank certificates.

Q Certificates of deposit or just putting your money in a savings bank?

A Yes, that's correct.

Q You put your money in a savings bank?

A Yes.

Q You say you went to a second dinner?

A Yes.

Q After you purchased the 1.15 acres?

A Yes.

Q You were invited by Mr. Lawler. Were you invited to that dinner by telephone?

A I think so.

Q Again, you spoke to Mr. Lawler at that dinner?

A He spoke to me.

Q Did he sit with you at the dinner?

A I beg your pardon?

Q Did he sit with you at the second dinner?

A Yes.

Q He attempted to sell you additional land at Rio Rancho?

A That's correct.

Q And you refused to buy it?

A That's correct.

Q Did Mr. Lawler let you finish your dinner?

A Pardon?

Q Did Mr. Lawler let you finish your dinner?

A I don't understand what you mean.

Q Did he let you finish your food?

A I had no difficulty about that.

Q What?

A I had no difficulty about that.

Q No difficulty about that. How long after you purchased your first acre did you go to the second dinner?

A I couldn't say precisely. It was a few weeks.

Q A few weeks. I want to go back to the first dinner.

A Yes.

Q You received an invitation by mail to go to the dinner?

A That's correct.

Q Did you and Mrs. Kaufman go together?

A Yes.

Q Now, can you tell me why, when you received the invitation, you decided to go to the dinner?

A Well, we thought it would be an interesting thing. Anyway, it was a free meal, a free dinner and movies, they promised to show something interesting, some interesting movies and it would be an interesting way to spend an evening.

Q Did they promise to show you movies of a community development in New Mexico?

A A community development, that's correct.

Q Tell me: Did you and Mrs. Kaufman at that time when you received the invitation and were told that you would be shown movies of a community in New Mexico, didn't you and she talk about the possibility of maybe you would like to live there?

A No, no.

Q Now, you purchased that land in 1968?

A That's correct.

Q And you made no attempt whatsoever to resell that land until April of 1975, isn't that correct?

A That's correct.

Q Mrs. Kaufman had died in May of 1974, is that correct?

A That's correct.

Q And so -- if you will excuse me -- a year passed between Mrs. Kaufman's death and your attempt -- and your letter to Rio Rancho asking Rio Rancho if they would buy the land back from you?

A That's correct.

Q You did not write that letter immediately upon Mrs. Kaufman's death, but about a year later?

A No, not immediately.

Q During the year between -- answer this yes or no -- during the year between Mrs. Kaufman's death and May of 1974?

A Yes.

Q And your letter to Rio Rancho asking Rio Rancho if they would buy the land back from you?

A Yes.

Q During that year, would you answer this yes or no, did you read some adverse publicity about Rio Rancho?

A I did.

Q You did, didn't you?

A Yes.

Q Having to do with a claim that the United States Government was making, is that right?

A I beg your pardon?

Q You can answer this yes or no. It had to do with a claim that the United States Government was making?

A That's correct.

Q Didn't that play a substantial part in your decision to ask Rio Rancho to buy the land back from you?

A Definitely.

Q Mr. Kaufman, I know you have testified that when you said in your letter to Rio Rancho that your wife's death had made it practically impossible for you to move to Rio Rancho.

A Yes.

Q I know you said that was sort of a white lie to create a sense of urgency, is that correct?

A That's correct.

Q Tell me, in fact, hadn't you and Mrs. Kaufman before her death discussed the possibility of retiring down to Rio Rancho?

A The only discussion was our agreement that we would never do it.

Q That you would never do it?

A Yes.

Q In other words, you talked about it with Mrs. Kaufman?

A If we talked about it, it was to the effect that we would not do it.

Q Your conclusion was that you would not?

A We would not.

Q In other words, you did discuss the possibility, is that correct?

A I am not sure whether we did.

Q In order to reach the conclusion you have to discuss the possibility, don't you?

A If we did, I am sure that we both intended not to -- to stay in New York.

Q You talked about whether or not you should go down to New Mexico and you decided you would not, is that right?

A If we discussed it at all, we must have decided that we would not.

Q What is your best recollection --

A That was my attitude and I assume it was my wife's.

Q You say it was your attitude. Did Mrs. Kaufman sort of feel that she would like to go down and live in

Rio Rancho?

A No, she did not.

Q When you offered your property for sale -- I will withdraw that.

I take it that when you received the solicitation from the Rocky Mountain Auction Company --

A Yes.

Q -- they said you want to auction off your property?

A That's right.

Q I take it that you did not make an immediate decision to accept that offer, am I correct?

A Some little time passed.

Q In other words, you did not say yes, that's what I want to do, you didn't say that right away, did you?

A Not immediately.

Q In fact, you had some substantial question as to whether you should or should not auction your property off, isn't that right?

A Yes.

Q So much so that you wanted to discuss it with your daughter?

A That's correct.

Q Was it in your mind to leave the property to your daughter?

A I am sure that is what I would have done if I had kept it.

Q Is your daughter married?

A No.

Q Your daughter said go ahead and sell it?

A I beg your pardon?

Q Your daughter said go ahead and sell it?

A Yes.

Q So then you accepted the offer of Rocky Mountain Land to auction off your property?

A That's correct.

Q When you purchased the land from Rio Rancho, you were allowed to pay for it over a period of years, isn't that right?

A That's correct.

Q You paid $45 a month?

A That's correct, after the down payment.

Q After the down payment, which was $175?

A That's correct.

Q Did you make -- did you tell the auction company that they could sell your land on similar terms, that is, the person purchasing it could pay you over a period of years?

A On the contrary, I told them that I would accept only a lump sum.

Q Only a lump sum. Now, when you purchased your property, you understood that if the time came when you wanted to build a house at Rio Rancho, if that time came?

A Yes.

Q And utilities had not reached your lot?

A Yes.

Q You could exchange one half acre of your land for one half acre which had utilities?

A That's correct.

Q You understood that when you bought the land?

A That's correct.

Q Mr. Lawler made that clear?

A Yes.

Q By the way, did Mr. Lawler force you to buy that land?

A not in a literal sense, no.

Q Now, did you tell the auction company to make sure that when they auctioned off your property they should tell whoever came to the auction that anyone who bought the property would have the right to exchange one half acre of it for one half acre in the building area?

A I had no discussion with them about that, on that subject.

Q Did you send them your purchase contract?

A Yes.

Q You did, but you had no discussion with them about what rights you had under that contract?

A That's correct.

THE COURT: When did you send them the purchase contract?

THE WITNESS: I couldn't tell you right now. I don't have the date.

THE COURT: Any recollection, before or after you were notified they had sold it?

THE WITNESS: After.

THE COURT: I asked the question, Mr. Fleming, because I thought the witness didn't understand your question.

MR. FLEMING: Your Honor, I wish I had asked the question because I think my question was not clear enough.

Q You sent it afterwards -- you sent them the contract after they sold the land?

THE COURT: He said before to somebody's question that he had sent the papers after the land was sold.

A Yes, that's correct.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: When you bought this property, Mr. Kaufman, you knew it didn't have any utilities?

THE WITNESS: I am trying to think back what my state of mind was at the time adn there is nothing in there about any question of utilities one way or another.

THE COURT: You thought you were just buying raw land for investment?

THE WITNESS: If I had thought in those terms --

THE COURT: I am asking you a question.

THE WITNESS: I did not think anything specific on that subject. I may have assumed that utilities would be there.

THE COURT: Would be there?

THE WITNESS: Yes.

THE COURT: But there weren't any there then?

THE WITNESS: Well --

THE COURT: Was anything told to you that led you to believe that there were utilities present at your property?

THE WITNESS: The only thing that was told me was those pictures which showed those properties, those developed properties, those houses and those lawns which gave me the impression that what I am buying was something like that or close to it.

THE COURT: Then what was the purpose of this exchange clause which you admitted to somebody here you knew about, that when you were ready to build you could exchange it for land that had utilities?

THE WITNESS: That was a good question that I should have thought about at the time but I didn't.

THE COURT: All right, you can redirect.

MR. KALEY: May I have a moment, your Honor?

MR. FLEMING: May I ask one more question?

THE COURT: You may. I may have opened something for you.

MR. FLEMING: It is one I left out.

BY MR. FLEMING:

Q When you bought the property, you were also told, were you not, that you could cancel your purchase if you went down and looked at the property, went down to Rio Rancho and looked at the property and didn't want it?

A That's correct.

Q You didn't go?

A I did not go.

THE COURT: Go ahead.

MR. KALEY: May I have a moment, your Honor?

(Pause.)

XXX

REDIRECT EXAMINATION

BY MR. KALEY:

Q Mr. Kaufman, you just testified that you were aware of the exchange privilege, is that correct?

A That's correct.

Q The exchange privilege --

MR. KALEY: Your Honor, may I read it from the contract?

THE COURT: It has already been gone into on cross examination what it was.

Q Mr. Kaufman, did Mr. Lawler tell you that the exchange privilege, you could take advantage of the exchange privilege if utilities had not already reached your property?

A I don't remember whether utilities was mentioned, but he said that I have the privilege of exchanging it -- he may have mentioned it.

Q You could exercise that privilege if utilities had not reached your property at the time you would exercise that privilege?

A I believe so.

Q Based on the films that you had seen at the dinner, did you expect that utilities would reach your property?

A Yes, I expected it to be very near.

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. KALEY: No further questions, your Honor.

THE COURT: You may step down. Thank you, Mr. Kaufman.

(Witness excused.)

THE COURT: We will adjourn for lunch.

Resume at ten minutes to two.

(Luncheon recess.)

AFTERNOON SESSION

1:50 p.m.

(In open court; jury present.)

THE COURT: Who is your next witness?

MS. HYNES: Your Honor, the government calls Geneva Clymer.

XXX GENEVA CLYMER, called as a witness by the government, having first been duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MS. HYNES:

Q Mrs. Clymer, I am going to ask you to keep your voice up so everyone in the jury box can hear your answers to my questions.

A Yes, ma'am.

Q Where do you live?

A We live in -- you want the street address?

Q Give me the full address where you live.

A 6000 Linderson Way, Tumwater, Washington.

Q Is that the state of Washington?

A The state of Washington. It's right outside the state capital, British Olympia.

Q How old are you?

A Well, I'll be 72 in January next year.

Q Are you married?

A Yes.

Q Is your husband alive?

A Yes.

Q And how old is your husband?

A He's 70.

Q Are you employed?

A I didn't understand.

Q Are you employed?

A Yes, we are, the second position. We retired once and now we are employed.

Q Both you and your husband?

A Yes.

Q What do you do?

A We manage a storage place, a self-service storage.

Q And are you an employee of the storage company?

A It's a large company. They have about ten different storage units operating in different towns.

Q And do you have any ownership in that?

A No. We are just employed. We receive our apartment and a small salary.

Q Did you buy land at Rio Rancho Estates, Mrs.

Clymer?

A Yes, we did.

Q When did you first buy land in Rio Rancho Estates?

A December, 1962.

Q What was your first contact with Rio Rancho Estates?

A I saw an advertisement in the TV Guide and it sounded very attractive and a small monthly payment, so we sent in for more information.

Q I will show you what has been marked as Government's Exhibit 140-F for identification (handing).

A That is it.

Q Is this the advertisement in TV Guide?

A Yes, it is.

MS. HYNES: I offer 140-F.

MR. ARKIN: We have no objection.

XXX (Government's Exhibit 140-F was received in evidence.)

Q Mrs. Clymer, on 140-F in evidence, there is handwriting on the top.

Is that your handwriting (indicating)?

A Yes, it is. I wrote that down when I put it in my box of papers so I would know where I got it from.

Q You said that you received some information as a result of mailing in a coupon for that?

A Yes, I did.

Q I show you Government's Exhibit 140-G for identification (handing).

Can you recognize that?

A It would have been this or something -- yes.

We received several things. This was one of them. I didn't save everything or couldn't find it, you know, when I came here.

Q At least this is one of them?

A That is one of the, yes.

MS. HYNES: We offer 140-G.

MR. ARKIN: Excuse me.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mrs. Clymer, you said you received this in 1962?

A I'm not quite sure exactly when. It must have been. Probably the beginning of 1963, because I didn't buy the property until December, 1962.

Q This was among --

A Probably in 1963 sometime.

Q Was this among other papers you received from Rio Rancho?

A Yes. I received more. I didn't think it was all necessary so I didn't send everything or bring everything.

Q Was this after you bought the property?

A Yes.

Q I take it you received other things after you bought the property, too?

A Yes. Lots of things. They kept sending material, promotional.

Q And you kept all those things?

A I didn't keep all of them, no.

We moved several times and I packed things away, you know, and couldn't get at them.

MR. ARKIN: All right. We have no objection to this.

XX (Government's Exhibit 140-G was received in evidence.)

BY MS. HYNES:

Q Mrs. Clymer, I show you Government's Exhibit 140-G for identification (handing).

Do you recognize the signature at the bottom of the page?

A That is my husband's signature.

Q And is this the contract to purchase in 1962?

A Yes, it is. Yes, it is, that's right.

MS. HYNES: We offer it.

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mrs. Clymer, was the property purchased in both yours and your husband's name?

A Yes, yes, it was.

Q So you had a contract which reflected the purchase in both yours and your husband's name?

A Yes. I'm sure both our names should have been on everything.

Q Did you look at Exhibit 1406 for identification?

A Yes. I just saw my husband's signature, but it certainly should have been my husband's signature down there.

THE COURT: 140-B is the number.

MR. ARKIN: I am sorry, 140-B, your Honor. It looked like a zero with a tail on it.

Are there --

MS. HYNES: Do you have a different copy?

Q Do you know, Mrs. Clymer, whether there were any other documents or contracts reflecting your purchase in 1962?

A There could have been, but, you know, that's been a long time ago and I just maybe misplaced things.

Q Do you recall having signed a contract in 1962?

A I'm quite sure I must have signed something. I don't think they would have accepted it with just my husband's signature. I must have signed something.

MR. ARKIN: Well, I --

A This is community property all the way through.

Q Is your husband here in New York with you, Mrs. Clymer?

A Yes, he is.

MR. ARKIN: If your Honor please, I would suggest that the proper witness --

THE COURT: I will see counsel at the side bar.

(At the side bar.)

THE COURT: Let me see it.

(Handing to the court.)

MS. HYNES: Your Honor, look at this letter (handing).

She is testifying about 1962.

I will offer the letter, also.

MR. ARKIN: Is he in the witness room with her?

MS. HYNES: Yes. But let me show you the letter.

THE COURT: Let me read it.

(Pause.)

THE COURT: This sort of admits it was signed only by the husband and without by the husband and she is inquiring whether they both should do it.

MS. HYNES: Let me develop it.

THE COURT: What is there to develop?

MR. ARKIN: Mr. Clymer is in the witness room.

MS. HYNES: Let me go on. There are more purchasers. If we can't get the thing in and we have to call the husband, we will call the husband.

THE COURT: Okay.

(Continued on next page.)

(In open court)

BY MS. HYNES:

Q Mrs. Clymer, when you and your husband purchased the land in 1962, you purchased a half acre, is that correct?

A That's correct.

Q And what was the reason for your purchasing that half acre?

MR. ARKIN: Objection, if your Honor please. She didn't.

THE COURT: She didn't buy it.

Are you talking about the one you had the contract on?

MS. HYNES: Yes, your Honor.

THE COURT: Obviously she didn't buy it.

Q Did you discuss the purchase of the Rio Rancho land in 1962 with your husband?

A Oh, yes. We agreed together.

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

I ruled at the side bar, Ms. Hynes. It is perfectly clear it can't come in.

Q Mrs. Clymer, did there come a time when you attended a sales dinner for Rio Rancho Estates?

A Yes.

Q And do you recall approximately when that was?

A Well, that was in 1968.

Q And did you go to that dinner with your husband?

A Oh, yes; everything together.

Q Where was the dinner held, to the best of your recollection?

A At the Tyee Motor Inn in Tom Water.

Q And that is in the State of Washington?

A Yes, the State of Washington.

Q And do you recall who was sponsoring that dinner?

A Well, it was the S&W Realty Company of Seattle was representing Rio Rancho Estates.

Q And how did you come to go to that dinner?

A We received an invitation in the mail.

Q Did you buy land at that dinner?

A Yes, we did.

Q Let me show you what has been marked Government Exhibit 140-E for identification (handing).

A I think we both signed that one. Did we?

Q Let me give it to you (handing).

A My signature is just legible, but it certainly is on there.

Q You did sign this contract 140-E?

A Yes.

Q And your husband's signature is on there?

A Yes, it definitely is.

One other thing, I --

THE COURT: Wait, wait, wait. Don't volunteer anything. Just answer the questions.

THE WITNESS: Yes, sir.

THE COURT: We get through much more quickly.

THE WITNESS: I understand. Okay.

MS. HYNES: We will offer 140-E.

MR. ARKIN: No objection.

(Government Exhibit 140-E received in evidence)

Q Mrs. Clymer, what was the reason for attending the dinner in January of 1968?

A Well, we still of course -- we didn't know too much about the property, had hopes that it had increased in value, so we wanted to find out more about the property down there. We thought if we went we would find out more about the first piece we had purchased.

Q And were you told anything about the first piece of property?

A Yes. We had told it had increased in value and that there was a great opportunity, and they presented such glowing accounts, showed us such beautiful pictures, that we felt, you know, felt it a deal to purchase some more.

Q You purchased an additional half acre in 1968?

A Yes, we did.

Q And what was the reason for the purchase in 1968?

A That was mostly for investment, thinking we were getting on in years and it would be something that we would have when we get older if we can sell it.

Q And in 1968 you were 63, is that correct?

A 62 and 63. My husband was 62 and I'm 63.

Q And what were you told about the purchase of this land as an investment?

A Well, in my own words, they said -- she showed us a picture, showed us that Albuquerque was growing so fast --

THE COURT: Wait a second.

I don't want any more of that.

THE WITNESS: You don't want any more?

THE COURT: Wait. We heard fifteen people tell us the same story.

Let's get on to something else.

THE WITNESS: Okay.

MS. HYNES: Your Honor, may I read from a portion of 140-E?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 140-E in evidence to the jury)

Q Was David Jepsen your sales person?

A Yes, I imagine he was. And that was just an initial down payment. We had to pay another $50 in a couple of weeks.

(Ms. Hynes continued reading from Government Exhibit 140-E in evidence to the jury)

Q Did you understand that you had that exchange privilege at the time you bought your land, Item 3 on the reverse side of the contract?

A Yes, we did understand that.

Q And did you understand at the time that you bought your land that the land that you were buying was unimproved land?

A Yes, we did, with the promise that it would be improved.

Q Let me show you Government Exhibit 140-L for identification, and ask if you can recognize that (handing).

A Yes, I can.

Q Did you receive that through the mail?

A After we had bought the first piece of property and it was very encouraging, because it showed us where our property was and all the improvements that were planned.

Q This was after the first purchase, is that correct?

A Yes, after the first purchase.

You see, this was very shortly afterwards, because they wanted us to see where our land was.

Q And the purchase of property by your husband in 1962 was in Unit 6, is that correct?

A What.

Q In Unit 6? Was that the first purchase in 1962, the land located in Unit 6, to the best of your recollection?

A Yes, that's right, yes.

MS. HYNES: I offer Government's Exhibit 140-L.

VOIR DIRE EXAMINATION

XX BY MR. ARKIN:

Q When did you say you received this?

A Shortly after we signed the contract.

They sent it to us to show us where the land was --

Q No. I have just asked you when, okay.

A I don't know the exact date.

Q It was after you signed the second contract?

A Yes.

Q In 1968?

A Oh, no, it was before that. Probably just a few months after we purchased it.

Q When did you sign --

THE COURT: Wait. Before you purchased what, the first?

THE WITNESS: The first piece of property.

Q Excuse me.

Is this in respect to the 1968 purchase?

A No. It is with respect to the 1962.

THE COURT: No, the one before.

Q I see.

So you received this after your husband, you say, bought property in Unit 6 in 1962?

A That's right.

Q You don't remember when you received it?

A I don't remember exactly when I received it.

Q But you do remember it was after the 1962 purchase by your husband?

A Well, we thought we were both purchasing it.

Q No, Mrs. Clymer --

THE COURT: Wait.

Don't worry about getting in that you both purchased it, all right?

THE WITNESS: Okay.

THE COURT: We are past that.

THE WITNESS: Okay.

THE COURT All right?

THE WITNESS: Okay.

THE COURT: All he wants to find out is, how long after your husband purchased the property in 1962 did you receive that map?

THE WITNESS: I can't give you an exact date, because I don't remember.

THE COURT: Well, approximately?

THE WITNESS: Approximately? Probably just several months.

THE COURT: Several months after.

MR. ARKIN: Your Honor, we object on the ground that it was not -- it was post a sales, post a sale which this lady was not even a participant in, had nothing to do with the sale.

THE COURT: I will let it in.

MR. ARKIN: I have been overruled.

(Government Exhibit 140-L received in evidence)

MS. HYNES: Your Honor, may I just hand this up and show it to the jury?

THE COURT: During a recess, not now.

MR. FLEMING: May I see it, Ms. Hynes?

MS. HYNES: Yes.

(Handing)

Q After the purchase of your property in January of 1968, did you attend another sales dinner?

Let me direct your attention to April of 1970.

A Yes, we did.

Q And how did you come to attend that sales dinner?

A The same way, by an invitation and thinking that we might find out more about the property.

Q At the third dinner did you also buy property?

A Yes, we did.

Q How much property did you buy at the third dinner?

A Just a half acre.

Q Where was that property located?

A I think they said it was in Unit 24. I don't have the papers with me.

Q What was the reason for buying that half acre?

A Same thing, investment. The way they described it we thought it was a good investment.

Q At the third dinner -- I am sorry the second dinner you attended in April of 1970, was anything said to you about your prior purchases of property?

MR. FLEMING: Object to the form of the question, your Honor.

THE COURT: Sustained.

A May I answer that?

MS. HYNES: I will ask a different question, Mrs. Clymer.

Q When you attended the dinner in April of 1970 was anything said to you with respect to your husband's purchase of property in 1962?

MR. FLMEING: Object to the form of the question, leading and suggestive.

A May I answer that?

THE COURT: Ask the general question, Ms. Hynes.

Q What, if anything, was said with respect to the other property that you had purchased in Rio Rancho?

MR. FLEMING: Object to the form of that question.

THE COURT: Sustained.

THE WITNESS: I can answer, okay?

THE COURT: You can if a proper question is put to you.

THE WITNESS: I don't understand.

Q What were you told at the dinners you attended in April of 1970, Mrs. Clymer?

A All right.

MR. ARKIN: May we ask by who?

Q Tell us by whom?

A I don't know the name of the party, but it was a representative of the company. He said that because we already was a property owner they would give us a better piece of property you know for the same amount of money.

Q Then you purchased your piece of property in

Unit 24?

A Yes.

Q Was anything else said to you at that sales dinner and, if anything was, by whom?

A Well, I don't know a name again, just a representative of the company.

Yes, they said that it was increasing in value and that the property out that way would be worth a lot more in just a few years. So we believed them.

Q What, if anything -- withdrawn.

Did there come a time when you visited Rio Rancho Estates?

A Yes, after the purchase of the third piece we realized we made a mistake because we couldn't afford the three pieces of property so we wrote to them. They said in six months, within six months if we would come down.

Q Who did you write to?

A I suppose Rio Rancho Estates.

Q What was the inquiry and what was the response?

A They said if we would come before a certain date, inspect the property and decide we didn't want it we could have our money back.

Q Did you do that?

A We did because I had a vacation coming so we could afford it so we went on down and we inspected the property and they were very nice to us while we were there, but we weren't too impressed with what we saw so we decided to give it up definitely.

Q This was the piece in Unit 24?

A Yes.

Q Did you cancel that piece?

A We cancelled it.

Q Can you tell us how that came about?

A After they took us on a tour and showed us the property, we had to go, of course, and sit at one of their desks and they tried to talk us into keeping it but we realized we couldn't so we said, no, we wanted to give it up according to the original agreement and so they did. They let us go and they sent us a check. It wasn't very much because we hadn't much in it.

Q How much had you paid to date?

A I think we had paid about four months payments at $25 a month. I might be one month off, I don't know, and then the down payment. We got back about $180 on that order.

Q At the time that you visited the property, was that approximately in October of 1970 to the best of your recollection?

A Yes, that's right because that is when I had my vacation, yes.

Q Were you shown your other piece of property that you had purchased, the piece of property that you had purchased in 1968, were you shown that piece of property?

A No, we didn't do anything about that because we hadn't got it paid for yet and we just thought we would keep it hoping in the future it would be worth something.

Q My question is were you taken to see the piece of property?

A Yes, we were. Of course, as far as --

THE COURT: Wait, you said yes.

A Okay, yes.

Q Let me show you what has been marked Government Exhibit 140-Y for identification.

Do you recognize that?

A Yes, I do.

Q Is that your husband's signature?

A Yes, it is.

Q Let me show you what has been marked 140-X. Does your signature appear on that?

A That is my signature. I handle all the business and made the checks.

Q Is this a check for a monthly payment on your property?

A A monthly payment on the second piece of property.

Q Let me show you 140-A for identification.

Do you recognize that?

A Yes, that is where we had to mail our payments to.

Q Where did you mail your payments?

A To the Chemical Bank, New York.

MS. HYNES: We offer 140-X and 140-A.

MR. ARKIN: We have no objection to 140-X or A.

(Government Exhibit 140-X and 140-A received in evidence)

xx

MS. HYNES: Your Honor, may I just read from a portion of this?

THE COURT: You don't have to. That is the mailing?

MS. HYNES: Yes, sir.

THE COURT: It is not necessary.

Q Mrs. Clymer, after returning from your trip to Rio Rancho Estates, did you make any efforts to resell the property that you still had?

A Yes, ma'am, I did, we did rather.

Q Can you tell us what you did?

A Well, first I called the realty company up in Seattle, S&W representing them and asked them what the property was worth.

They gave us a figure that was very satisfactory and so I think it was two or $3,000 a piece so I said could you possibly help us in selling this.

They said, no, as long as the company had property to sell, they couldn't sell any for us. Our only recourse was through a private realty company or an individual sale.

Q Did you make any other efforts to resell your property?

A Yes, I did. I found out the name of a real estate company in Albuquerque and I am sorry I cannot remember their name. I listed it with them for one year and they said there were no inquiries at all, that it was very hard to sell that type of property so we dropped it after one year.

Q Approximately when --

MR. ARKIN: May we strike the testimony in response to the Albuquerque realty company?

THE COURT: Sustained.

Q Do you recall approximately when you listed your property for sale for that one year with a broker in Albuquerque?

A Well, it was probably right soon after we got back from that vacation. Probably in 1970 I imagine. I am not positive of the exact dates.

Q Did you make any other efforts to resell your property other than listing it with this broker in Albuquerque?

A We didn't ourselves, but we were contacted by a Pan American land company. I think they were in Indianapolis, Indiana, Lake Mill Road or something like that. They said that they had success --

MR. ARKIN: Objection, your Honor.

THE COURT: Hold it. You cannot tell us what they said to you.

Q Did you list your property with that company?

A Yes, we did.

Q How long did you list your property?

A One year.

Q Did you have to pay a fee?

A What?

Q Did you have to pay a fee?

A Yes, $100.

Q Were you able to sell your property?

A No.

Q Did there come a time when you did sell any of your property?

A Yes, through the auction company, we received a letter from Rocky Mountain Auction, Denver, Colorado.

May I go on?

Q Yes.

A We filled out a card if we wanted to sell the property at this auction and what would be the minimum amount we would take for it.

Q Let me show you what is already 801-C in evidence, the card, and ask you if that is your handwriting.

A That is my handwriting. I printed it, but it is still my handwriting.

Q This card has a legal description for Unit 6, Block 29, Lot 6.

A That is right, that is the one that we had all paid for and the one we bought in '62.

Q How much had you paid for the piece of property in Unit 6, what was the total amount that you had paid for it?

A Well, including interest and everything it was close to a thousand dollars or a little more.

MS. HYNES: I offer Government Exhibit 140-B.

MR. ARKIN: How much was that?

MS. HYNES: $1,000 including interest.

MR. ARKIN: No objection to Government Exhibit 140-B.

(Government Exhibit 140-B received in evidence)

Q The Unit 6 property was purchased in 1962, is that correct?

A That's correct.

Q This card has designated minimum price, $1,000.

A That's right. I thought we might get that much.

Q Pardon?

A That is what we would like to have gotten for it at least.

Q Was that how much you had paid into it as of that time?

A Yes.

Q Was your property sold at the auction?

A Yes, it was. We received -- may I go on?

We received a copy of the sale and if we agreed to it we were to sign it and send it back.

Q How much were you offered for the property?

A $500, less commission.

Q $500 less commission?

A That's right.

Q Did you accept that offer of $500?

A We accepted it. We thought we would probably never get anything for it if we didn't accept that.

MR. ARKIN: Move to strike that, your Honor.

THE COURT: Strike it.

Q What did you actually realize -- how much did you actually realize as a result of selling that one piece in Unit 6 at the auction?

A Approximately $430 because we paid $15 to list it, half a year's taxes and they took $50 commission out.

Q At the time that you sold the Unit 6 half acre parcel at the auction, had you paid in full for the piece of property that you bought in Unit 11 in 1968?

A No, I don't think so. We still had a few of our payments. It was almost paid for, but we had some more payments.

Q Have you since that time paid in full for the property in Unit 11?

A Yes, we have a deed.

Q Approximately how much have you paid for that property?

A Well, probably with the interest $1800 or more.

MR. ARKIN: Is that including interest, your Honor?

THE WITNESS: Including interest.

MS. HYNES: Can we have this marked Government Exhibit 140-O.

(Government Exhibit 140-O marked for identification)

MR. ARKIN: No objection.

(Government Exhbit 140-O received in evidence)

MR. ARKIN: Will you take the handwriting off of it, Ms. Hynes?

MS. HYNES: Yes, we will.

Q Did you list the half acre that you purchased in 1968 which was located in Unit 11, did you list that at the auction as well?

A No, we did not.

MS. HYNES: Your Honor, I have no further questions of this witness.

XXX CROSS EXAMINATION

BY MR. LAUER:

Q Mrs. Clymer, my name is Elliot Lauer; I am with the defense.

Your husband purchased the unit 6 property in 1962?

A That's right.

Q That was in December. Am I correct that in 1963, about March, you and your husband were contemplating retiring in two years or so?

A We had thought of it.

Q And you were thinking of building a home in the Albuquerque area, were you not?

A We had thought of it but had not decided.

Q No, but in March of 1963 --

A We thought it was a possibility.

Q You were thinking of building a home in the Albuquerque area?

A It was a possibility.

Q And you wrote a letter to the Albuquerque Chamber of Commerce?

A Yes, we did.

Q You asked them about Rio Rancho?

A Yes, we did. You know, buying something by mail, sight unseen, I was a little bit worried about it so we did that.

Q Mrs. Clymer, I am showing you a document marked 3591-B for identification, which is a document you produced to the government. Do you recognize this document?

A Yes, I did write this letter.

Q That is a letter you wrote to the Albuquerque Chamber of Commerce?

A Yes.

MR. LAUER: I offer it.

MS. HYNES: Your Honor, may we have a side bar on this?

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes.

Let me see it.

(Pause.)

THE COURT: Yes.

MS. HYNES: Your Honor, our objection is that if this is to lay the foundation to try to get in the response, our objection to the response is that it is hearsay and that it is improperly admissible through this witness.

THE COURT: Responding to this letter?

MS. HYNES: Yes.

THE COURT: Let me see the response.

MR. LAUER: We have never seen the response.

MS. HYNES: You should.

MR. FLEMING: You never gave it to us.

MR. ARISOHN: It is not in the file.

THE COURT: I don't know if you are going to use it or not, but the objection is overruled. Now you can look at it.

MR. LAUER: Thanks.

(In open court.)

XXX (Defendants Chester Carity and Daniel Friedman Exhibit EX received in evidence.)

MR. LAUER: Your Honor, may I read that to the jury?

THE COURT: Yes.

(Mr. Lauer read from Defendants' Exhibit EX in evidence to the jury.)

Q You got a response from the Chamber of Commerce?

A We had a response from the in which they said that they had had no complaints against the property, but they still, you know, it was still a risk I am sure.

Q You continued to make your payments?

A We continued. We took a chance and continued to make the payments. We changed our mind about retiring there though shortly after.

MR. LAUER: Mark this.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit EY marked for identification.)

Q Mrs. Clymer, showing you EY for identification, is this a document that you received from the Chamber of Commerce?

A Yes.

MR. LAUER: We offer that.

MS. HYNES: Your Honor, we object.

THE COURT: Overruled.

MS. HYNES: Your Honor, can I refer you topage 4 of this?

THE COURT: Overruled.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit EY received in evidence.)

MS. HYNES: Your Honor, can we make an offer of proof on that?

THE COURT: This is their proof, not yours.

MS. HYNES: I understand, but I want to make an offer of proof with respect to that document.

THE COURT: No.

Q Aside from the property that you and/or your husband owned in Rio Rancho, do you own any other property, Mrs. Clymer?

A Just our own in Tumwater, Washington. It is practically the same as Olympia, but they call it Tumwater, Washington. The state of Washington.

Q Is that the home you presently live in?

A No, we do not live in there. My daughter lives in it. We are employed and we have an apartment furnished to us.

Q Did you ever own any other land?

A We owned some property in California, but I have never seen it. I never bought it, my mother left it to me. It is also unimproved property in Imperial County.

Q Have you ever sold it?

A No, we never sold it and never tried.

Q How large a piece of property is it?

A It's ten acres of sort of a desert, I imagine, and then a lot in a little town, I think the name of the town is Drawlee, something like that, it is above El Centro, near that part of the country, near the salt and sea and I never had an opportunity to go down and see it.

Q Do you own any other property?

A No.

Q The home in Tumwater?

A Yes.

Q And ten acres in California?

A And the Rio Rancho, yes.

Q What county in California is the ten acres?

A In Imperial County.

Q Imperial?

A The county seat at El Centro. I am sure it is Imperial.

Q Is that in southern California?

A Southern, yes.

THE COURT: It is on the Mexican border.

A El Centro is. Our property is above there a little ways.

Q You purchased your -- you and your husband purchased a second piece of property in 1968?

A That's right.

Q That was the first time you went to a sales dinner?

A That's right.

Q You bought a third piece of property in 1970?

A That's right.

Q Then you wrote the company and said --

A We made a mistake and wanted our money back.

Q And the company told you tha tyou had your six month refund privilege?

A That's right.

Q You went out and visited the property?

A Yes.

Q You visited the property?

A Yes.

Q How didyou go down to the property?

A How did we what?

Q How did you come to the property?

A We drove our car.

Q Who went?

A It was in October of 1970.

Q I am sorry, who went?

A Just my husband and I.

Q Did you stay at Rio Rancho?

A Yes, we did.

Q You stayed at the Panorama Inn?

A Yes, we did.

Q Did you find the accommodations nice?

A They were very nice.

Q Then while you were out at the property someone took you around and showed you the various lots that you owned?

A Yes.

Q You saw the lot in unit 6?

A I don't remember actually seeing it, although they might have taken us. They took us around, but they all looked the same, I couldn't tell which was which.

Q The undeveloped area all looked the same?

A The undeveloped area all looked the same.

Q This was in 1970?

A Yes.

Q You saw the developed area with the houses and the mountains?

A Yes.

Q Then you went out and saw the unit 6 property and the unit 11 property and the unit 24 property?

A Yes, they just drove us around and showed us, but I couldn't tell which was which although they told us at the time.

Q You and your husband said you were satisfied with the unit 6 property and you were satisfied with the unit 11 property, but you wanted to cancel unit 24 property?

A Well, actually we did sign a statement saying we were satisfied because we had to do it in order to get our money back on that last piece. That's what we were interested, in getting our money back on the last piece.

Q You went out there and saw the property and didnt' like it and you made the decision to get your money back?

A Yes. It wouldn't have done us any good --

THE COURT: Wait a second. Only answer questions.

THE WITNESS: Okay.

Q You made the decision?

A Yes.

Q And you got your money back?

A Yes.

Q After seeing the property?

A Yes.

Q Did you ever place any advertisements yourselves in newspapers in Washington advertising your property at Rio Rancho for sale?

A No, we didn't because we thought --

Q No, you didn't?

A No, we did not.

Q Did you ever speak to any of your relatives, friends or neighbors inquiring whether they would like to purchase it?

A Yes, no one was interested.

Q You didn't advertise?

A No.

Q Did you explain the exchange right to them?

A Except to the real estate companies, that's all.

Q Didyou explain the exchange right?

A What?

Q Did you explain the exchange right to your friends?

A Yes, it wouldn't nave done any good for the property we already had --

THE COURT: That isn't the question.

THE WITNESS: Okay.

THE COURT: He is asking you about the conversations you had with friends who might be interested in buying the property.

THE WITNESS: No, I didn't mention the refund deal because it wouldn't apply.

THE COURT: He didn't ask about refund, Mrs. Clymer, he asked about the exchange privilege.

THE WITNESS: Oh, yes, the exchange privilege.

Q You did explain?

A Yes, but at that time I was not sure --

THE COURT: Let's start over again.

(Pause.)

(Continued on next page.)

THE COURT: Let's start over again.

You discussed with friends of yours the property you owned?

THE WITNESS: Yes.

THE COURT: And you asked them if they wanted to buy it?

THE WITNESS: Yes.

THE COURT: When you described the property to these friends of yours, did you tell them if they bought the property, they would have the right to change it for a lot in the developed area if they wished to build?

THE WITNESS: Sir, I mentioned it, but I also said I didn't know whether it would apply or not since they were not the original purchasers.

THE COURT: All right.

Q In 1975, you received a solicitation in the mail from Rocky Mountain Land Company?

A Yes.

Q And they asked you whether you would like to list your property with them?

A Yes.

Q And you listed only one of your lots?

A That's right.

Q You had two lots at that time?

A The one that was paid for. I didn't list the one we were still paying on.

Q Am I correct that you were holding onto that lot for your daughter?

A For our future profits, we hoped.

Q Were you thinking of giving the unit 11 property to your married daughter?

A Yes, eventually if we didn't sell it before.

Q You were thinking about it?

A Yes.

Q Did you ever write to Rio Rancho complaining to them that someone had ever told you that you could resell your property?

A No.

Q You never had any complaints in that regard?

A No, no, I -- I didn't think it was any use.

Q Well, no one had ever told you that?

A No.

MS. HYNES: Objection, your Honor. It is beyond the scope of direct examination.

THE COURT: Overruled.

A It's hard to remember now just what I did do at that time.

Q My question is, no one had ever told you that they would resell the property for you?

A No.

Q And no one ever had told you that you could turn around and sell that property right away and make a profit?

A Well, they intimated that at the dinner.

Q But no one told you that?

A Not in that many -- not in just that way.

THE COURT: What did they say to you?

THE WITNESS: They said that this property was improving in value all the time and that it was an investment and that in a few years we should realize our money and more.

THE COURT: But that isn't the answer to the question put to you.

The answer to the question that was put to you, the answer is no, isn't it?

THE WITNESS: Well, I guess so.

THE COURT: Now you say it is a couple of years or a few years, and the question to you is, did you turn around and sell the property the next day?

THE WITNESS: I didn't even think about that.

THE COURT: Go ahead.

Q You knew at the time you bought your Rio Rancho property in your experience with your property in California that land is not liquid? It's not like the stock market?

A I don't know what the property in California had to do with it.

Q You had prior experience with owning land --

A We had never had tried to sell the one. We never bought it.

Q You sold your unit 6 property to Sunland Realty?

A Yes, through this auction.

Q Through the auction?

A Yes.

Q Do you know what Sunland Realty did with the property?

A What?

Q Do you know what Sunland Realty did with the property that you sold to them?

A No, we do not know. No, we do not know.

Q I just have one further question:

Do you recall speaking to -- withdrawn.

Did you have any conversations with representatives of the prosecution in the summer of 1976?

A With the seller?

Q One of the Assistant U.S. Attorneys in the summer of 1976, this year?

A Just by telephone conversation.

Q And am I correct that one of the Assistants told you that you might be visited by a representative of the defense who would wish to talk to you, but that --

A That's true.

Q -- you could be interviewed if you wished, but that they recommended thatyou not talk to them?

MS. HYNES: I object to that, your Honor.

THE COURT: Sustained.

MR. LAUER: I have no further questions.

MR. ARKIN: Your Honor, may I read a couple of excerpts from Exhibit EY?

THE COURT: Yes.

(Mr. Arkin read from Government's Exhibit EY in evidence to the jury.)

CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Clymer, was it you who sent the letter to the Chamber of Commerce of Albuquerque, New Mexico in 1963?

A Yes, it was.

Q And in that letter you said that you are aware that buying land by mail is not a good risk?

A Right.

Q It's not a good risk, is that so because you have not seen it, it is site unseen?

A That's right, because we had not seen it. That's why I wanted their opinion.

Q But you know, Mrs. Clymer, that with respect to all of the land which you bought from Rio Rancho, talking about the 1968, 1970, that you had a right to cancel your property after you saw it and you didn't like it, right?

A Right, but there was no opportunity --

Q Ma'am, I am asking you yes or no. Is that right?

A That's right.

Q So you had this cancellation privilege, is that right?

A If we could get down there. We couldn't.

Q Well, I am asking you yes or no.

A Yes, okay.

Q And you did go down there on certain occasions, didn't you?

A Many years later, yes.

Q Well, how many times did you go to Albuquerque altogether?

A Just the once.

Q And you went down -- you were able to get down there?

A What?

Q You were able to get down to Albuquerque, weren't you?

A Yes, because I had a vacation coming and could afford it. I couldn't afford ir before.

Q But nobody from the company ever stopped you from going down to Albuquerque, did they?

A No.

Q In fact, when you wanted to go to Albuquerque on that one time, they were very accommodating to you?

A Yes, they were.

Q They helped you make reservations, didn't they?

A Yes.

Q You made reservations at Panorama Inn?

A Yes.

Q So no one from the company ever discouraged you from visiting Rio Rancho or Panorama Inn or anything, did they?

A No.

Q Now, you own other land, too, don't you?

A Just our home in the state of Washington.

Q And also some land in California?

A That undeveloped land --

Q Down in Imperial Valley?

A Yes.

Q Which is down in central California?

A Yes.

Q And that land you haven't seen, either, have you?

A No. We never bought it, never --

Q Never went down to see it?

A No.

Q You don't have any idea what it is worth?

A No.

MS. HYNES: Your Honor, just so the record is clear, the witness' testimony is not Imperial Valley in central California. I think we have been over that.

THE COURT: Imperial Valley in El Centro.

MR. ARKIN: Being a native Californian, your Honor, I have some minor knowledge of California. I'm sorry I said something that is out of the record.

THE COURT: I will assume Imperial Valley is in Imperial County.

MR. ARKIN: Actually, Imperial Valley is in Imperial County.

THE COURT: That's what I said.

MR. ARKIN: All right. Back in New York.

Q In that same letter, you said that you had heard very favorable comments about Albuquerque, isn't that so?

A Oh, yes.

Q Who had you heard those favorable comments from?

A Mostly from Rio Rancho Estates.

Q Well, how about from anybody else? Anybody else?

A No, because I kept receiving literature from them.

Q But you never heard anything favorable from anyone else about Albuquerque?

A Not really. It was a city and growing.

Q And later when you got that thing from the Chamber of Commerce, that was something else you learned about Albuquerque, right?

A Yes.

Q Did they send you anything else, the Chamber of Commerce?

A No.

If we hadn't gotten --

Q I am asking for a yes or no, Mrs. Clymer.

No?

A I don't think I understood your question.

Q Did you receive anything else from the Chamber of Commerce aside from that piece of paper?

A No, no, no.

Q When you wrote the letter in 1963, you said that it was risky buying something sight unseen, is that what you meant to say?

A Yes, I did worry about it.

Q Did you undertake during those years to find out anything about Albuquerque aside from what Rio Rancho told you?

A No. I felt I didn't need to.

Q You worked for a state agency in Washington, didn't you?

A Yes, I did.

Q The State Department of License?

A Yes, Motor Vehicle.

Q Motor Vehicle.

And you dealt with records and all kinds of papers in your career, didn't you?

A Yes. But nothing to do with property, of course.

Q But you knew that if you wanted to you could find out something about the state of New Mexico, isn't that right?

A Yes, that's right.

Q You could have found out its population?

A Yes.

Q Where it was on the map?

A Yes.

Q What its climate was?

A Yes.

Q But you never did any of those things?

A Because Rio Rancho --

THE COURT: Wait, wait, wait.

THE WITNESS: Okay.

A No, I didn't do any of those things.

Q What you got back from the Chamber of Commerce -- actually, that was the Better Busuiness Bureau of New Mexico -- nothing you got back was inconsistent with what Rio Rancho had told you, was it?

A No.

Q It was consistent, wasn't it?

A In a way.

Q In 1973, do you recall communicating with anybody from Rio Rancho regarding your having a prospective purchaser of one of your lots?

A No, I don't remember. That's --

Q In 1973 you owned three lots, am I correct?

A Yes.

Q And in 1973 --

A No. Just two, because we gave the one up in 1970.

Q Excuse me. You had two lots in 1973?

A Yes, that's right.

Q You had one in unit 11 and one in unit 6?

A That's right.

Q At that time, do you recall having had any correspondence or telephonic communications with anybody from Rio Rancho?

A I was always getting literature favorable.

Q No. But did you ever communicate with anybody there --

A No.

Q That is, you to them?

A No.

Q You never recall talking to anybody at all about having a purchaser for one of your lots?

A No.

Q You say you made efforts among your neighbors to sell one of your lots?

A Yes. But that --

Q Is that yes or no? Did you do that?

A Yes, I did, to a certain extent.

Q To a certain extent?

A Yes.

Q Which of your lots were you trying to sell, unit 11 or unit 6?

A Probably the one -- possibly the one that was already paid for

Q That would have been unit 6?

A Yes.

Q How many of your neighbors did you talk to?

A Oh, not many. Just two or three. I don't remember now.

Q Did you tell them about where the lot was located in respect to Rio Rancho?

A Probably.

Q Did you show them a map?

A Probably.

Q And you showed them the exchange privilege?

A I told them about it. I don't know as I showed them anything.

Q Did you show them any of the literature that you received from Rio Rancho?

A Yes.

Q Did you tell them how much you wanted for the property?

A No. At that time anything we could get.

Q No. Did you tell them? I am not asking you for --

A No.

Q Did you tell them that?

A Yes.

Q You didn't tell them a price?

A No.

Q And you say you never tied to advertise in your local newspapers?

A We thought it was useless.

Q No, I am not asking you that.

I am asking you, yes or no, did you ever try --

A No, no, no.

Q You never tried to do that.

By the way, did you ever purchase any property from any other land development companies?

A You mean --

Q Yes or no? Did you ever purchase any other property from any other companies selling subdivided land?

A No, not from any other land development company.

Q You never did?

A No.

Q But you purchased property from somebody else?

A An individual at one time.

Q You purchased land from an individual?

A And only held it for a little while and resold it.

Q Where was that land you purchased from an individual?

A Ocean Shores, Washington.

Q What is that?

A Ocean Shores, Washington.

Q Was that a land development?

A Yes, but we did not purchase it from the land development company.

Q You purchased it from somebody who did from the land development company, is that correct?

A It's possible. I don't know where they got it from.

Q But you did purchase it from someone who owned the land?

A Just a lot.

Q Just a lot?

A From an individual.

Q When was that?

A Well, let's see. I don't know.

1970-something, but I can't tell you the exact date.

Q And how long after you purchased it did you sell it?

A About six months. We decided we didn't want to live down there and we sold it.

Q How much did you pay for it?

A About the same, just about the same as we paid for it, maybe made $100 on it.

Q I know. But how much did you pay for it originally?

A Well, we paid 3,000 for it, but we only paid about 1,000 because we had the mortgage.

Q You paid 1,000 down and 2,000 mortgage?

A Yes.

(Continued on next page.)

Q And then six months later you sold the property for how much?

A Yes, to an individual,again, for --

Q How much?

A About a part of our down payment plus $100 and they took over the contract.

Q I see.

And you made $100 on your $1,000 in six months?

A Didn't make much on that, but at least we didn't sell it for a loss.

Q All right.

You sold it for a profit, didn't you?

A Small profit, yes.

Q Yes.

Six months later.

A Yes.

Q All right.

A That's the only land --

Q I am not asking you any questions right now. Give me a moment.

(Pause)

Q During the years in addition to the literature which was marked in evidence just a little while ago, you received other things from Rio Rancho, didn't you?

A We were always receiving literature from them.

Q And you kept a good bit of it, too, didn't you?

A A good bit of it, and when we moved into the small apartment we threw away.

Q Some you threw away and some you kept?

A Yes.

Q And the things you kept you brought into Ms. Hynes?

A Not all of it, part of it.

MR. ARKIN: Would you mark this.

(Defendants Howard Friedman and Henry Hoffman Exhibit EZ and FA, respectively, marked for identification)

Q Mrs. Clymer, I am showing you EZ for identification (handing).

This is one of the documents you received, isn't it, which you gave to Ms. Hynes?

A Yes, this is one of them.

Q Thank you very much.

And also showing you FA, this is also one of the documents you received and gave to Ms. Hynes?

Here, let me hand it to you (handing).

A I received it if I brought it with me.

Q Can you identify that one as you did this one?

A Yes, we received these, I guess.

MR. ARKIN: We offer EZ and FA.

MS. HYNES: Your Honor, we have no objection to FA.

We do have an objection to EZ.

THE COURT: Let me see it.

(Handing to the Court)

MS. HYNES: I would like to state my objections at the side bar, your Honor.

THE COURT: I will see you at the side bar.

(At the side bar)

THE COURT: Yes?

MR. ARKIN: There is an objection, I understand.

MS. HYNES: I was waiting for Mr. Fleming.

THE COURT: The objection is made by Mr. Arkin. Go ahead.

MS. HYNES: Your Honor, this is an editorial which was run in response to the indictment. It is not dated and it is basically a press release in response to the indictment, and on that ground we object to it.

MR. ARKIN: Your Honor, the literature was let in just because the lady had received it and it seems to me that this literature here goes to the good intent of the company, it shows what their intention was, what they had in mind and it should be on no different footing than the other one.

THE COURT: Objection sustained.

(In open court)

(Defendants Howard Friedman and Henry Hoffman Exhibit FA received in evidence)

MR. ARKIN: May I proceed, your HOnor?

THE COURT: Yes.

CONTINUED CROSS EXAMINATION

BY MR. ARKIN:

Q Mrs. Clymer, when did you receive a notice from the Rocky Mountain Land Auction Company about the auction they were intending to hold?

A It was somewhere -- I don't know the exact date, but, of course, it was in 1975.

Q Did you do any inquiry as to who the Rocky Mountain Land Auction Company was?

A No. Their letter was explanatory. They were just conducting the auction.

Q The answer is no?

A No, I didn't make any other inquiries.

Q Did you inquire of the Better Business Bureau as to whether they were a reliable and reputable company?

A No.

Q Did you communicate with Rocky Mountain Land Auction Company and ask them anything about themselves?

A No. I just listed --

Q You just sent your $15 in and listed it with it?

A Yes; glad to get rid of it.

Q Did you make any efforts at that time to obtain any advice from any person with knowledge as to the value of your property?

A We didn't have anyone to turn to, really.

Q I am asking you whether you did.

A No.

Q You didn't write to the Better Business Bureau or Chamber of Commerce in Albuquerque about the Rocky Mountain Land Company, did you?

A No.

Q You put down as a designated minimum price $1,000 for your piece of property in Unit 6.

A That's about what we had into it and that's what --

Q Is that the price you put down?

A Yes.

Q You later received back a communication from Rocky Mountain Land Auction Company that they could sell your property for $500, is that right?

A . That's right, it's the best they could do.

Q Well, that's what they told you they could sell it for?

A Yes.

Q Was there anybody from Rocky Mountain Land Auction Company who told you it was the best they could do?

A Yes. They had this document.

Q No, no. Is there anybody, any person who said with his mouth to your ear, "That's the best we could do"?

A No, no, no.

Q Is there any letter which you got from the Rocky Mountain Land Auction Company that said, "That's the best we can do"?

A If I did, I don't have it now. I'm sorry. I don't remember.

Q You merely accepted what you say they auctioned your land for without any more inquiry, is that correct? Yes or no?

A Yes.

Q Did you ever think to communicate with any appraiser in Albuquerque or any bank in Albuquerque or anybody else in Albuquerque about the value of your property?

A Just that real estate company down there that said they couldn't sell it.

Q What was the name of that real estate company?

A I don't know. I have forgotten.

Q Did you have any correspondence with them?

A I could have it in some of my boxes at home, but I couldn't find it.

Q Did you ever think to communicate with anybody in Albuquerque, though, after you received your communication from Rocky Mountain Land Auction Company regarding the value of your property?

A No.

Q You have been to auctions before, haven't you?

A No.

Q Ever?

A Not that type of auction, no.

Q Have you ever been to any auction before?

A Not really.

Q Not even for antiques?

A No.

Q For nothing?

A No.

Q You don't know that auctions are where people go to get bargains?

A Yes, I know.

Q So you put your property on the block for somebody to get a bargain.

A That's right.

Q And they got a bargain.

A We were glad to get rid of it.

Q I am asking you, did they get a bargain?

A Probably. I can't sell it. What's the bargain.

MR. ARKIN: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. HYNES:

Q Mrs. Clymer, when you --

A Yes.

Q Mrs. Clymer, when you visited Rio Rancho in October of 1970, were you able to exercise a cancellation privilege with respect to your property in Unit 6 and in Unit 11 at that time?

A No.

MR. ARKIN: Objection.

THE COURT: Sustained.

A Just that one.

THE COURT: Wait.

Q You mentioned to Mr. Arkin that you had purchased a piece of property in Ocean Shores in Washington, in the state of Washington.

A Yes.

Q What was that property?

A It was just -- it's an ocean town down there and we did think some day we might build, but we changed our mind, we decided to stay right where we are.

Q And you were able to resell it?

A Yes, we were able to sell it. That was better property and we could sell it.

MS. HYNES: Your Honor, I have no further questions.

THE COURT: Thank you very much.

You may step down.

THE COURT: Am I dismissed now? Can I go back?

THE COURT: Yes.

(Witness excused)

MS. HYNES: The government calls Charles Clymer.

CHARLES M. CLYMER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Clymer, where do you live?

A Ma'am?

Q Where do you live?

A We live in Tumwater , Washington.

Q How old are you?

A Seventy.

Q Did you purchase property at Rio Rancho Estates?

A Yes, ma'am.

Q When did you first purchase property at Rio Rancho Estates?

A 1962.

Q I show you what has been marked Government's Exhibit 140-B for identification (handing).

Does your signature appear on that?

A Yes, ma'am.

Q And is this a contract for the purchase of property in 1962?

A No.

'63. '63 is when I bought it.

Q The top, does that say December 4, 1962?

A '62 is when we got it.

MS. HYNES: The government offers 140-B.

MR. ARKIN: No objection.

xxx (Government Exhibit 140-B received in evidence)

Q At the time you signed this contract to purchase property at Rio Rancho Estates, did you discuss that purchase with your wife?

A Yes, ma'am.

MS. HYNES: I have no further questions, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

XXXX BY MR. LAUER:

Q Mr. Clymer, you visited the property in 1970?

A Sir?

Q Did you visit Rio Rancho in 1970 with Mrs.

Clymer?

A Yes, sir, yes.

Q And at that time you owned three lots?

A Yes, sir.

Q A lot in Unit 6?

A 6.

Q 11 and 24.

A 11 and 24.

Q And you were taken around to the different lots?

A No. I was taken to 11 and 24, and we decided we didn't want to go over to look at the other one. He showed us where it was at. It was on the road.

MS. HYNES: Your Honor, this is beyond the scope and repetitive.

THE COURT: Overruled.

Q You signed certain forms when you were out at Rio Rancho?

A Yes, sir.

Q Saying that you were satisfied with the lots which you had seen?

A Yes.

MR. LAUER: Could you mark these two, please?

(Defendants Chester Carity and Daniel

Friedman Exhibit FB and FC, respectively, marked for identification) xxx

Q Showing you FB for identification, is that your signature, sir? (Handing)

A Yes, sir.

Q And that is the one on Unit 6?

A That's the one on Unit 6. That's the one we didn't go over to look at.

Q And showing you FC for identification, is that your signature (handing)?

A Yes.

MR. LAUER: We offer them.

MS. HYNES: No objection.

(Defendants Chester Carity and Daniel Friedman Exhibits FB and FC, respectively, received in evidence) xxxx

Q Directing your attention to FB briefly, this is Unit 6, Lot No. 6, the half acre lot?

A Yes, sir.

Q And it says right there, "I have inspected my property and am satisfied with the homesite I purchased."

A This one property --

Q Is that what it says, sir?

A Yes, that's what it says.

Q And that is your signature?

A That's my signature.

Q Then there is a place for purchasers comments and there are three lines and there is no writing.

A No writing.

Q Is that correct?

A That's right.

Q Directing your attention to FC, that is your name and your wife's name?

A Yes.

Q That is the Unit 11 property?

A Unit 11 property.

Q Half acre?

A Yes.

Q It says, "I have inspected my property and am satisfied with the homesite I have purchased".

A Yes.

Q I have read correctly?

A That's right.

Q And that is your signature?

A That's my signature.

Q Then there are purchaser's comments? No comments.

A No comment.

Q And then with regard to Unit 24, you said you weren't satisfied and the company gave you back your money?

A Yes.

Q Directing your attention to 140-B, which is the 1962 purchase agreement, among the rights that you had under this contract, am I correct, were the right to visit Rio Rancho within six months from the date of purchase and get all your money back if you weren't satisfied?

A Yes.

MR. LAUER: No further questions.

MR. ARKIN: I have just a couple.

end

4. PM

CROSS EXAMINATION

XXX

BY MR. ARKIN:

Q Mr. Clymer, with respect to your purchase in 1962 of a half acre, you purchased that with no money down and $10 a month, didn't you?

A Yes, sir.

Q You knew that you had six months to visit the property and to cancel it and get all of your money back if you weren't satisfied, isn't that so?

A That's right.

Q If you visited it within six months and you expended $40 for your property, you would get it all back, isn't that right?

A That's right.

Q You also knew with respect to that very same property that you had a right if you ever intended to move down to Albuquerque and Rio Rancho to take that piece of property which you had gotten for xero down and $10 a month and exchange that into a lot in the developed area of Rio Rancho, didn't you?

A Yes, sir.

MR. ARKIN: I have no further questions.

XXX

REDIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Clymer, showing you Defendants' Exhibit FB in evidence and FC in evidence, these are the record of property visitations that have your signature?

A Yes.

Q Can you tell us how you came to sign those two documents?

A Well, it was at those meetings, they give the show and pictures and told us --

Q Were these documents that you were asked to sign at the property saying that you were satisfied?

A Yes, those were at the property saying we was satisfied.

Q How did you come to sign those two documents saying you were satisfied?

A Well, we signed those when we went out, but we never went over to 6 to see it. We seen the other two and said it was all right.

Q Did you have the right to cancel your property in unit 6 and in unit 11 when you visited in October of 1970?

A No.

MR. LAUER: I object.

THE COURT: Overruled.

MS. HYNES: I have no further questions, your

Honor.

THE COURT: You may step down. Thank you, Mr. Clymer.

(Witness excused.)

THE COURT: Next witness.

MS. HYNES: Your Honor, we have no further witnesses to call.

THE COURT: You are excused until Monday morning at 10:00.

(Adjourned to Monday, December 20, 1976, at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ronald A. Williams (Resumed)		5112	5144	
Samuel A. Kaufman	5159	5171	5199	
Geneva Clymer	5201	5230	5271	
Charles M. Clymer	5265	5266		

EXHIBIT INDEX

Government	Identification	In Evidence
136-B		5162
136-I		5166
136-H		5167
136-C,136-D		5170
140-F		5203
140-G		5205
140-E		5211
140-L		5217
140-X,140-A		5223
140-B		5227
140-O	5229	5229

Defendants Howard Friedman and Henry Hoffman	Identification	In Evidence
EW	5173	

EXHIBIT INDEX

Defendants Chester Carity and Daniel Friedman	Identification	In Evidence
EX		5232
EW		5233
EZ	5257	5259
FA	5257	5259
FB	5268	
FC	5268	

gtjb

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

December 20, 1976
10:00 a.m.

oOo

(In open court in the absence of the jury.)

MS. HYNES: Your Honor, at the outset, I would like to report to the court on the progress that the government has made over the last several days in terms of reviewing the evidence and making determinations as to what witnesses must still be called and what documents must still be offered into evidence.

We are in a position now where the remaining witnesses are very few in number, the documents have been weened considerably and we have some documents left to offer, but we are hopeful that the government will be in a position to rest very shortly.

The problem that we have with the remaining few witnesses --

THE COURT: What do you mean by shortly?

MS. HYNES: I hope by Wednesday, your Honor.

THE COURT: All right.

MS. HYNES: The difficulty we have is with the remaining few witnesses that we do have to call, some of them are count witnesses, and given the scheduling with airlines and problems of getting these witnesses here, some of them are not going to be available until Wednesday -- at least two of them are not going to be available until Wednesday.

We do have two witnesses available today who will testify and we also have a number of documents that we will be offering today and through until we are completed offering documents.

We still have the open matter on the ruling of your Honor with respect to the grand jury testimony of Mr. Friend.

THE COURT: I am prepared to rule on that now.

How many witnesses do you have?

MS. HYNES: For today, your Honor, we have two, and we also have documents that we will be offering today.

THE COURT: How many witnesses for tomorrow?

MS. HYNES: We have one who we know will be available tomorrow. However, there are two who are definitely not available and coming from out of town until Wednesday. We can hold the three remaining witnesses until Wednesday.

THE COURT: No, because I am leaving Wednesday night and I am not going to stay around waiting for them.

Get your witnesses in tomorrow.

MS. HYNES: There are two witnesses who are coming from out of town who cannot get airline reservations.

There is one who is coming in from out of town who cannot get an airline reservation.

THE COURT: What about the other one?

MR. KAUFMAN: The other one is a physician or a dentist whose hours prevent him from getting here until Wednesday.

THE COURT: We will arrange to sit tomorrow night if we have to.

We can't arrange a court schedule for a dentist over a four-day period. One day I understand, not the four days.

MR. KAUFMAN: I will contact him and see if it is possible, but I know he has both appointments in his office and hospital hours that he --

THE COURT: Monday, Tuesday and Wednesday?

MR. KAUFMAN: He told me that -- just Monday and Tuesday. He can be here Wednesday morning.

THE COURT: How long is he going to take?

MR. KAUFMAN: Not more than an hour.

THE COURT: Who is the other witness?

MR. KAUFMAN: The other witness --

THE COURT: Let's have the names. There is no secret going on here.

MR. KAUFMAN: It is a Dr. Reyes Guerra and Mr. Grey.

THE COURT: Who is Dr. Guerra?

MR. KAUFMAN: He is the dentist, I believe, who lives in Westchester and his profession will not enable him to be here until Wednesday morning.

THE COURT: What is he going to testify to?

MR. KAUFMAN: He is a count witness.

THE COURT: Get him either this afternoon, tonight or tomorrow. We won't wait for him until Wednesday.

MR. KAUFMAN: I will ask, your Honor. If he has a patient, though, who requires his attention --

THE COURT: He can come at night, can't he?

MR. KAUFMAN: I know he has night hours in the hospital. I don't know. All I can do is ask.

THE COURT: Who is the other witness?

MR. KAUFMAN: There is Mr. Grey, who lives in Buffalo, and I believe -- I think he is an airline pilot and his schedule will prevent him from being here until Wednesday morning.

THE COURT: If you don't finish on Wednesday, he will come back the following Tuesday, whether he is on a plane or not.

MR. KAUFMAN: I think those are the only two witnesses we will have to call on Wednesday and I don't see any problem of getting them on and off --

THE COURT: We haven't finished two count witnesses in one day so far.

MR. KAUFMAN: I think we have, but -- the count witnesses are becoming shorter and shorter since we don't go into the dinner presentation any more.

THE COURT: If we don't finish on Wednesday, whoever is on the stand will return the following Tuesday morning.

MR. KAUFMAN: I understand.

THE COURT: All right.

I am prepared to rule --

MS. HYNES: Your Honor, you were about to rule on Mr. Friend's grand jury testimony?

THE COURT: Yes.

(Pause.)

THE COURT: I have a document I received from the government the other day headed "Designation of Friend's Grand Jury Testimony."

I gather that the first offer is page 14, lines 6 to 21.

MS. HYNES: That's correct, your Honor.

THE COURT: That's correct?

MS. HYNES: That's correct.

THE COURT: Page 14, lines 6 to 21 may be read.

The next is page 19, lines 11 to 20, with the redaction of line 25 of the words "with Hank Kaufman."

They may be read.

The next is page 20, lines 2 to 6 with the redaction of the words "or whether they were Mr. Hoffman or a combination of both."

They may be read with the redaction.

I should say as redacted to be more accurate.

The next is page 32 --

MS. HYNES: Your Honor, there are still two lines on page 20, 8 to 10.

THE COURT: They may be read.

Page 32, line 14, through page 33, line 15.

They may be read, but I gather you are going to have to change the number of the exhibit to make the exhibit in this trial so it is meaningful to the jury.

MS. HYNES: Yes, your Honor.

THE COURT: What is its exhibit number?

MS. HYNES: Your Honor is referring to --

THE COURT: Line 15, page 32.

MS. HYNES: I believe it is 389, but I would have to double-check that, your Honor. But I will get the exact number and give it to the court and counsel.

THE COURT: All right.

On page 33, you are reading through line 15, right?

MS. HYNES: Yes, your Honor.

THE COURT: All right. You may read that.

Page 48 --

MS. CROSS: Your Honor, on page 33, it refers to a memo of Hank Hoffman which in an earlier version that the government requested they removed that reference to Mr. Hoffman.

MS. HYNES: Yes. Our offer is that we would redact line 12.

THE COURT: That is the offer, to redact that.

MS. CROSS: You had mentioned other redactions and not that one.

THE COURT: All right.

I should say that all of these readings are subject to the ruling that they are not offered against or not admissible against the corporations.

48, lines 19 through 25 you may read.

Page 49, lines 2 through 23 is admissible only as against the defendant Friend.

Page 52, lines 13 to 19, admissible only as against the defendant Friend.

Page 29, lines 19 through 25 you may read.

I sustain the objection to page 30, lines 2 through 5.

I notice that I did not indicate the dates of these rulings.

The rulings for pages 14 through 52 that I have already made covered the grand jury session of July 24, 1975.

The ruling for pages 29 and 30 cover the grand jury testimony in the morning of July 31, 1975.

We now come to the afternoon session of the grand jury held on July 31, 1975, referring to page 10, line 21 through page 12, line 2. That may be read.

We now come to September 4, 1975, the morning session.

Page 63 line 23, through 64, line 7 is admissible only as to the defendant Friend.

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